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T R E A T I S E
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L E A S E S
A N D
T E R M S for Y E A R S.

By MATTHEW BACON,
OF THE MIDDLE TEMPLE, ESQ.

L O N D O N :

PRINTED BY A. STRAHAN,

LAW PRINTER TO THE KING'S MOST EXCELLENT MAJESTY;

For T. Cadell, C. Dilly, G. G. and J. Robinson, J. Johnson, R. Baldwin,
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1798.



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THE acknowledged merits of the following little Tract, and the general importance of its subject, would perhaps make it unnecessary to offer any apology, or even reason, for communicating it to the world, detached from the work in which it has hitherto been found. But, lest the Proprietors of BACON'S Abridgment should be charged either with indiscretion or with rapacity; with indiscretion, in rashly separating from the Abridgment one of its fairest and most admired parts, and thereby possibly lessening the demand for the whole; or with rapacity, in attempting to multiply profits by multiplying copies, they beg leave to state what it was that gave occasion to the present Publication. Whilst the last Edition of the Abridgment was in the press, the Proprietors were informed, that the title Leases would shortly appear in a separate pamphlet, and that part of it was then actually printed off. Alarmed at such an attempt upon a work in which they were so deeply interested, they endeavoured by remonstrances to prevail with the parties to relinquish their design; but these proving ineffectual, no other means were left them of asserting their claims, than by making a separate Publication of the Tract themselves. They
therefore

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therefore announced their intention of doing so ; and in consequence of that the intended work was withdrawn, and the Tract is now offered to the Publick in its present form. At the end the Proprietors have subjoined some Precedents of Leases, which they have been favoured with by a Gentleman of high reputation as a Conveyancer, whose name they would have been proud to have had permission to mention.

LEASES

Leases and Terms for Years.

A LEASE for years is a contract between lessor and lessee, for the possession and profits of lands, &c. on the one side, and a recompence by rent, or other consideration, on the other. [1 Term Rep. 598-9.]

This is esteemed in law a middle kind of interest between an estate for life and a tenancy at will; for those who held large districts and tracts of lands, being unacquainted with the arts of husbandry and tillage, found it their interest to lease out their demesnes, which for want of care and cultivation lay waste, and afforded them little or no profit; and this way of letting for years was thought best to answer the design and intentions of the lord, as well as the expectations of the tenant; for if they had let them for life, this had given the tenants too great a power over the lord, because then they would have had a property in the freehold, and by suffering disseins, or feigned recoveries to be had against themselves, might have shaken or endangered the inheritance of the owner; and on the other side, if they had leased their land only at will, few would have been willing to bestow any great pains or industry upon so precarious a possession, which the arbitrary will and pleasure of a peevish lord might have defeated. Spelm. Rem. 2.

Originally, leases for years were but of little regard, the tenant having only *utile*, not *directum dominium*, and being said *tenere nomine alieno*: and as he had only the perception of the profits, whoever recovered the freehold reduced likewise the possession, whether such recovery were true or feigned; and the lessee had no other remedy but an action of covenant against the lessor; and this, at least, was thought a just construction, that he who had divested himself of the profits of his lands for a time, by giving them to another, should be obliged to maintain that gift, or be liable to make satisfaction if he did not; and this was the more reasonable, because the lessee was equally bound to answer and make good the rent during the term; and if he did not, the law allowed the lessor to maintain an action of covenant, as well as of debt against him, for with-holding thereof; and as it made this construction for the lessor upon the words *yielding and paying*, which were no express covenant in themselves, it was but reasonable it should make the like construction for the lessee upon the word *dimisit*, which in itself no more imported an express covenant on his part: but by making this construction mutual, the courts did justice to both; and by making it at all, they plainly

Vide tit. Covenant, Bac. Abr. and Salk. 137. pl. 1.

Leases and Terms for Years.

(a) Therefore, if a lease be made to a bishop, abbot, parson, or any other

shewed their opinions of the lease to be no other than a contract or agreement between the parties, and not such an act as transferred any property to the lessee: and this is one reason why leases for years are considered as chattels, and go to (a) executors.

sole corporation, and his successors, for such a number of years, yet it shall go to the executors or administrators of the lessee, and not to his successors, because a term for years being looked upon as a chattel, the executors or administrators are the only persons the law allows to succeed thereto; and this succession to the chattel cannot be altered or controuled by any limitation of the party: but yet in such case it seems, that the executors or administrators of the lessee shall hold it in the right of, and as trustees for the successors; for the book says, they shall have it in *auter droit*. Co. Lit. 9. a. 46. b. 90. a.— But this rule, as to the succession of chattels, hath two exceptions: 1. In case of the king, who by his prerogative may take any chattels in succession, and, consequently, a lease made to him and his successors for years is good, and shall go accordingly, and not to his executors or administrators. Co. Lit. 90. a. 11 Co. 12. a.— The second exception is in case of the chamberlain of London, who, by custom of the city, confirmed by divers acts of parliament, may take chattels in succession for the benefit of orphans; but *quære*, if this custom extends to leases for years, for the books only mention recognizances, obligations, &c. which are given or entered into to the chamberlain and his successors, by way of security for orphans portions; *quære*, therefore, if a lease may be made to the chamberlain and his successors for years? Cro. Eliz. 464. 4 Inst. 249. 4 Co. 65. Fulwood's case.

Co. Lit.
45. b.
Mirror, 164.
293.
Vent. 53.

Another reason was, because at first these leases were made but for a small number of years, (for my Lord Coke tells us, that by the ancient law of *England*, no man could have made a lease for above forty years at the most,) and the reason thereof seems to be, because they were only made to serve the occasions and exigencies of the lord in cultivating and improving his demesnes, not to borrow money on or raise portions for daughters, or such other uses as are now made thereof; therefore there was no need to extend them to any great length of time, since they might be renewed as often as occasion required; besides, the lessees, if they were evicted, being only to recover damages, it would have been fruitless to prolong leases for the term of 1000 years, when the persons who are to possess under such leases had no remedy for their damages but by recourse to the representatives of the original lessor.

Vide title
Fines and
Recoveries;
Bac. Abr.

Also, another reason might be, because these leases for years were under the power of the freeholder to destroy by a recovery; for the person coming in by the recovery, was supposed to come in by title paramount, and so was not bound or obliged by them, and, by consequence, few could be willing to take leases for any longer term, which they might so easily be defeated of.

Bro. tit.
Leases, 16.
F. N. B.
198. 220.
Vaugh. 127.
4 Co. 80.
Lev. 46.
2 Mod. 18.

But though in the reign of *H. 7.* it was resolved, that the lessees should not only recover damages as a recompence for the possession lost, but should also recover the possession itself; and the statute 21 *H. 8. cap. 15.* gives the termor power to falsify all manner of recoveries had against the tenant of the freehold, upon feigned and untrue titles; from whence men began to limit long leases, because by such purchases they escaped the wardship, relief, and other burdens that were annexed to the ancient tenures; yet no alteration was made in the succession to them, the law having been formerly settled as to that point; and if they had not carried the succession in the manner they formerly did, they had lost the end of such limitation.

And

And though at this day terms for years are multiplied to a much longer duration than they were formerly, and there is now ample remedy to recover the term itself, yet the succession continues the same; for besides the reasons already given, it would be inconvenient to have had one rule of property for short terms, and another for those that were longer, being all of the same nature, and still no more than leases for years; besides the difficulty of fixing the just bounds to any precise determinate number of years, since one or two years, more or less, would have made very little difference in reason, and long or short are only terms of comparison; as a lease for forty years is long with respect to one of eight or ten years, and yet short with respect to another of a hundred years; therefore, that there might be an uniformity in the law, all leases for years are holden to be of less value than estates for life, as being originally of much shorter duration, and also because they were under the power of the tenant of the freehold to destroy, and therefore are considered only as chattels, and cast upon the executors.

[Long terms, as for 2000 years, are considered (at least after part of the time has elapsed) not as leases, but as terms to attend the inheritance. Cowp. 597.]

We shall consider this head under the following divisions:

(A) Of what Things Leases may be made for Years.

(B) Of the Persons by whom Leases may be made:
And herein, first, of Leases by Infants.

(C) Of Leases made by Husband and Wife: And herein,

1. Of Leases made by Husband and Wife by the Common Law.
2. Of Leases made by them pursuant to the Statute of 32 H. 8. cap. 28.

(D) Of Leases by Tenant in Tail: And herein,

1. What Leases Tenant in Tail might have made by the Common Law.
2. What Leases Tenant in Tail may now make to bind his Issue, since the 32 H. 8. cap. 28.
3. When and in what Cases the Issue in Tail, or Strangers, shall be bound by voidable Leases made by Tenant in Tail.

(E) Of Leases for Lives or Years by Ecclesiastical Persons: And herein,

1. What Leases they might have made by the Common Law, and of the several enabling and disabling Statutes, with some general Observations on them.
2. Of the Rules to be observed, and Qualifications requisite to the Perfection of such Leases: And herein,

Leases and Terms for Years.

Rule 1. Where an Indenture or Deed is necessary.

Rule 2. When such Leases are to begin : And herein,

1. When such Leases as have no Date at all, or a void or impossible Date, are to begin.
2. Such Leases as have a good Date, and are delivered on the same Day; in what Cases the Day of the Date or Delivery is to be taken inclusive, and in what Cases exclusive.
3. Such Leases as have a good Date, but are not delivered till a Week or Month, &c. after, when they are to begin, and how the Declaration on such Leases is to be framed.

Rule 3. Within what Time the old Lease is to be surrendered; and herein of concurrent Leases.

Rule 4. That such Leases are not to exceed three Lives, or twenty-one Years.

Rule 5. Of what Things Leases may be made to bind the Successor.

Rule 6. What shall be said a usual Letting to Farm upon the several Statutes, and by what Persons.

Rule 7. What Rent is to be reserved; And herein,

1. That there must be a Rent reserved.
2. That this Rent must continue due, and be payable to the Lessors and their Successors.
3. That such Rent must be the same, or more in Quantity than hath been reserved within twenty Years next before such Lease made: And herein,
 1. What shall be said to be the ancient Rent, where Variety of Rents have been reserved, or something formerly reserved now omitted or varied.
 2. In what Manner such Reservation is to be made.
 3. Where the Addition of more Land, with or without the Addition of more Rent, shall avoid such Leases.
 4. Where a Reservation of the whole Rent, or only *pro Rata* on a Lease of Part, shall be good.

Rule 8. That such Leases must not be made without impeachment of Waste.

(F) Of Leases by Parsons, Vicars, and others, with respect to other Qualifications.

(G) Of the Consent or Confirmation of others to Leases made by Ecclesiastical Persons: And herein,

1. Where

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5

1. Where Confirmation is necessary either in respect of the Leases or Estates made, or of the Persons making the same.
2. What Persons are to confirm such Leases or Estates, and in what Manner.
3. What Estates they who make such Confirmation are to have.
4. At what time such Confirmation is to be made.
5. How far a Regard is to be had to the true naming of the Corporation or Persons who do confirm.

(H) Of void or voidable Leases by Ecclesiastical Persons : And herein,

1. Against whom Leases not pursuant to the Statutes, or otherwise defective, are void or only voidable.
2. By what Means and in what Cases such voidable Leases may be made good.
3. The Manner of avoiding such Leases as are only voidable.

(I) Of Leases made by those who have but a particular Estate or Interest in the Lands leased : And herein,

1. Of Leases made by Tenant in Dower or Curtesy.
2. Of Leases made by Tenant for Life.
3. Of derivative Leases, or by one who is but a Lessee for Years himself.
4. Of Leases made by a Disfeisor or Disfeisee.
5. Of Leases made by Joint-tenants or Tenants in Common.
6. Of Leases made by Copyholders.
7. Of Leases made by Executors or Administrators.
8. Of Leases made by a Bailiff of a Manor.
9. Of Leases made by a Guardian.
10. Of Leases made pursuant to Authority.
11. Of Leases made pursuant to Powers in private Conveyances and Settlements.

(K) By what Form of Words Leases may be made.

(L) What Certainty is requisite to Leases for Years as to their Beginning, Continuance, and Ending : And herein,

1. With regard to the Date of the Lease.

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2. With regard to other Circumstances taken Notice of in the Deed of Lease, whereby to ascertain the Commencement thereof.
3. The Certainty of Leases for Years as to their Continuance.
4. The Certainty of Leases for Years as to their Duration and Ending.

(M) In what Cases, and to what Respects an Entry by the Lessee is requisite to the Perfection of his Lease.

(N) Leases for Years, when to take Effect as a Reversion, when as a future Interest, and when neither the one nor the other.

(O) Leases for Years by Estoppel, how far and against whom such Leases are good.

(P) Leases for Years and future Interests, how far they may be barred or destroyed, and how far not, and where an Entry before the Term begun is a Disseisin.

(Q) How far, and by what Means, Leases for Years in Trust to attend an Inheritance may be barred or destroyed.

(R) Leases for Years, when merged by Union with the Freehold or Fee.

(S) Of Surrenders of Leases for Years: And herein,

1. Of Surrenders in Fact or Express: And here again,
 1. By what Words such Surrender may be made.
 2. Upon what Estate such Surrender may operate.
3. Of Surrenders in Law, or implied Surrenders: And herein,
 1. *With regard to Leases in Possession.*
 2. *With regard to Leases in Futuro.*
 3. *With regard to the Thing itself so surrendered.*

(T) Leases, when determined by cancelling the Deed,

(A) Of what Things Leases may be made for Years.

AFTER such time as leases for years began to be looked upon as fixed and permanent interests, and that the lessees were sufficiently provided to defend themselves, and their possessions, against the acts and incroachments as well of the lessor as of strangers, men found it their interest to improve and encourage this sort of property, and therefore extended it to all sorts of interests and possessions whatsoever, being led thereto by that known rule, that whatsoever may be granted or parted with for ever, may be granted or parted with for a time; and therefore not only lands and houses have been let for years, but also goods and chattels, though the interest of the lessee therein differs from the interest he hath in lands or houses so let for years: for if one lease for years a stock of live cattle, such lease is good, and the lessee hath only the use and profits of them during the term; but yet the lessor hath not any reversion in them to grant over to another, either during the term or after, till the lessee hath re-delivered them to him, as he would have of lands in case of such lease for years, for the lessor hath only a possibility of property in case they all outlive the term; for if any of them die during the term, the lessor cannot have them again after the term; and during the term he hath nothing to do with them, and, consequently, of such as die, the property rests absolutely in the lessee: so, whether they live or die, yet all the young ones coming of them, as lambs, calves, &c. belong absolutely to the lessee as profits arising and severed from the principal, since otherwise the lessee would pay his rent for nothing; and therefore this differs from a lease of other dead goods and chattels; for there, if any thing be added for the repairing, mending, or improving thereof, the lessor shall have the improvements and additions, together with the principal, after the lease ended, because they cannot be severed without destroying or spoiling the principal; neither is the succession of young ones, in case any of the old ones die, to be resembled to a corporation aggregate, whereof when any die, those that succeed shall be said part of the same corporation, for the corporation, in its publick capacity, never dies; but this being a lease of such and such individual cattle, when any of them die, the possibility of reverting property, which was left in the lessor, is determined and at an end. But the lessee in such case cannot kill, destroy, sell, or give them away, during the term, without being subject to an action of trespass, as it should seem; but in case of a lease of a house, together with goods, it is usual to make a schedule thereof, and affix it to the lease, and to have a covenant from the lessee to re-deliver them at the end of the term, and without such covenant the lessor could have no other remedy, but trover or detinue for them after the lease ended.

Godb. 112.
Leon. 42.
Owen, 139.
5 Co. 16, 17.
Dyer, 55. 2.
110. a.
212. b.
Bro. tit.
Leases, 23.
2 Bull. 7.

Lit. § 78.
Co. Lit.
57. a.

Bro. tit.
Leases, 40.

If one hath a corody for life, he may let it to another, or to the grantor himself; so may the grantee of house-bote, or hay-bote; but in case such lease be to the lessor himself, rendering rent, he can only have them by way of retainer, being to arise out of his own provision, or his own land.

Hard. 357.

But as to lands or other things of inheritance, as they may be granted or departed with for ever, so they may for a time, and, consequently, may be leased for years in all cases where no inconvenience or injury to the publick is like to ensue; for then mens' private interests must give way to the publick, and what might otherwise in its own nature be good and allowable, must upon that account be disallowed and stand condemned: wherefore it having been settled, that all leases for years were but chattels, and as such should go to executors or administrators, the first case wherein we find any objection to a lease for years is, that of the office of Marshal of the King's Bench Prison, for that being an office of great trust, concerning the administration of justice in the keeping of prisoners, if it should be granted for years, it might be injurious to the publick, by being in suspense till probate of the will or administration taken out; and if the officer should die indebted, so that none would prove his will, or take out administration, then there would be no officer at all, and executors or administrators would be in by act of law, without allowance of the court: also, it might be a question, if such office should not be forfeited by outlawry, or be affets in the executor's hands; and many other inconveniencies would follow, if such grant for years were allowed: for the same reason it was holden likewise, that the offices of *custos breviarum*, chirographer, clerk of the pipe, of the king's silver or of the crown, remembrancer or chamberlain of the Exchequer, prothonotaries, and other offices in the several courts of justice, cannot be granted for years; and though the offices of sheriff and coroner were granted for years, till restrained by 14 E. 3. cap. 7. yet it was never debated what inconveniencies might ensue by allowing thereof. And these reasons held equally good against granting the office of warden of the Fleet, or any other (a) gaolership.

(a) In a Cha. Ca. 70. it is said by my Lord Chancellor, that he thought the case of a gaolership not grantable for years too easily slipped over.

6 Mod. 57. Sutton's case. [But see ft. 8 & 9 W. 3. c. 27. and 27 G. 2. c. 17, with respect to this office.]

Raym. 216. 2 Lev. 71. 3 Keb. 32. The King v. Lady Broughton.

(b) Note:

There seems a difference between Sir George Reynolds's case and this, because in Sir George Reynolds's case the grant for years was from the crown, in whom all offices, in relation to the administration of justice, are originally and inherently lodged; and therefore, for the crown to grant out such office for

years.

years, may be liable to the objections before mentioned; but in this case the dean and chapter are the immediate grantees of the crown, and they have the office to them and their successors for ever in fee, and are perpetual gaolers themselves, and answerable to the crown, notwithstanding any superior lease to another; and therefore they always take security of such under-lessee for their own indemnity.

But such offices as do not concern the administration of justice, but only require skill and diligence, may be granted for years, because they may be executed by deputy, without any inconvenience to the publick: Therefore, where a grant for years was made of the office of garbler of spices in *London*, it was adjudged to be a good grant, or at least a good appointment for years, within the intent of the statute 1 *Jac. 1. cap. 19.*

Hard. 46.
Jones and Clerk.

The office of printer was granted for years, 6 *Car. 1.* and held a good grant, being but an employment: So, the office of post-master was granted to the Lord *Stanhope* for years, and held good.

Hard. 352.

The office of registrar of policies of assurance in *London* concerning merchants was granted by the king for years, and adjudged to be a good grant, because it did not concern the administration of justice in any court, but required only the skill of writing after a copy: So, the office of making and sealing *sub-pœnas* was granted for years, and allowed to be good; and there several precedents are cited of offices granted for years; as, first, offices in which the safety of the realm was concerned, as the office of the warden of a haven or port by *H. 6.* of gunpowder by 1 *Car. 1.* of making gunpowder by *Car. 2.* Also, offices concerning the trade of the realm have been granted for years; as 1 *H. 7.* of the exchange of money; 18 *H. 8.* of gager; 17 *Rich. 2.* of aulnager, though a seal belongs to it, with which the officer is intrusted; of the letter-office, 3 *Car. 1.* Also, offices in courts of justice have been granted for years; as the office of surveyor of the green wax, of the sixpenny writs in Chancery and *sub-pœnas*, of comptrolrier and customier, and of making out process in *C. B.* All these, and several others, have been granted for years; but no dispute having been made of the validity of them, how far some of them would hold at this day, may be a question.

Hard. 352.
354-357.

Dyer, 303.
Hob. 146.
3 Keb. 80.

But where one made a grant for years of the stewardship of a court-leet and court-baron, this was holden void as to the court-leet, being a judicial office, but good as to the court-baron, being only ministerial, and the suitors judges thereof; but the grant appearing afterwards to be for years determinable upon the death of the lessee, it was holden good for both, because there was no danger of its coming to executors or administrators.

2 Lev. 245.
2 Jon. 126.
Howard and Wood.

One Mrs. *Dennis* was found by office to be an idiot *a natiuitate*; the king grants the custody of body and estate to Sir *Alexander Frazier*, his executors and administrators, during the idiocy; Sir *Alexander* dies, and then the king grants the custody to Mr. *Prodgers*; and whether he or the executrix of Sir *Alexander* had the better title, was the question? It was said to be a trust in the king, and therefore not grantable to executors or administrators, and that if the grantee die intestate, there would be none to take care of the idiot. On the other side it was said, that the king had not only a trust, but an interest, and might have disposed of the

2 Chan. C.
Prodgers v.
Lady Frazier, Vern.
9. 137.
S. C.

Leases and Terms for Years.

the profits to his own use, or have granted them over as he thought fit, in case of an idiot, though it was otherwise in case of a lunatick; and that being a chattel, it should naturally go to executors; and to this opinion my Lord Chancellor inclined, but directed the validity of the patent to be tried at law: and (a) in *B. R.* the grant to Sir *Alexander* was holden good; for the king has the same interest in an idiot that he had in his ward, which always went to the executor of his grantee, though it was otherwise in the case of a lunatick.

(a) 3 Mod.
43. Vern.
192. S. C.

2 Roll. Rep.
274.
Godb. 413.

Co. Lit.
16. b.
9 Co. 97. b.

The office of park-keeper was granted for years, and no objection made to it; for this does not concern the administration of justice, but only requires diligence and care.

Dignities or honours cannot be granted for years; as to be earl, duke, baron, &c. because then they must go to the executors or administrators, whilst the estate that should support them would go to the heir, and so introduce confusion and absurdity.

By the 23 *H. 6. cap. 10.* it is provided, "That no sheriff shall let to farm in any manner his county, nor any of his bailiwicks, hundreds, or wapentakes;" which proves that before this statute it was not unusual to let them to farm.

By the 12 *Car. 2. cap. 23. § 27.* the lord treasurer, or commissioners of the treasury for the time being have power to let to farm all or any the rates or duties of excise upon beer, ale, cyder, and other liquors therein mentioned, so as the same exceed not the term of three years; without which clause the treasurer or commissioners of the treasury could not have made such lease, though perhaps the king himself might, having the absolute interest and ownership therein.

By the 12 *Car. 2. cap. 25. § 3.* power is given to the king's agents for the granting of wine licences to any person or persons for any time or term not exceeding twenty-one years, if such person or persons shall so long live, upon such rent as shall be agreed on, to be paid half-yearly; but such licences are not to be granted to any but those who personally use the trade of selling by retail, or to the landlord of such house, nor shall the same be assignable, or of any benefit but only to the first taker.

By the 22 & 23 *Car. 2. cap. 14. § 6.* power was given to the master and chaplains of the *Savoy*, to encourage the rebuilding thereof, to demise any of the lodgings for any term not exceeding forty years, under such rents as they could procure, without renewing.

[By the 27 *G. 3. c. 26.* the lord treasurer, or commissioners of the treasury for the time being are empowered to let to farm for any term, not exceeding three years, the duties upon post-horses.]

(B) Of the Persons who may make Leases: And herein, first, of Leases made by Infants.

AS to leases made by infants, or such as are under the age of twenty-one years, what seems most considerable is, whether any, and what leases for years made by such are absolutely and *ipso facto* void, or only voidable by them; about which the opinions of the books seem a little unsettled.

Some opinions are, that all leases for years made by infants (a) without reservation of rent, are absolutely void, and not merely voidable.

441. (a) So, if a trifle only had been reserved, as a pepper corn. Mod. 263.—But that a lease made by an infant to try his title is good, though no rent be reserved. Moor, 105. 2 Leon. 216. Noy, 130.

Other opinions there are, that leases for years in general by infants are only voidable, and not void, without taking notice whether any rent were reserved on such leases or not; and some even seem to hold, that though no rent at all be reserved, yet the leases are not thereby absolutely void, but only voidable by the infants when they come of age, and that they may confirm the same at their full age by accepting fealty, which is at least incident to every lease.

from the court in the case of Zouch v. Parsons, 3 Burr. 1806.]

Also, most of the books agree, that if a rent were reserved on such lease for years, then it would be only voidable by the infant at full age, without saying how it would be if no rent at all were reserved, unless by implication that it would be void in such case.

But all the books agree, that if an infant make a lease for years, he cannot plead *non est factum*, but must avoid it by pleading the special matter of his infancy; which seems to favour the opinion of those who hold, that the lease is not absolutely void; for if the lease were absolutely void, there does not seem to be any good reason why he might not plead *non est factum*, as a feme covert certainly may do in such case, whose lease is absolutely void, so that no acceptance of rent after her husband's death can make it good.

An infant copyholder without licence of the lord made a lease for years by parol, rendering rent, and at full age was admitted, and accepted the rent, and then ousted the lessee: and in this case, though it was agreed, that a lease for years, rendering rent, by an infant, of freehold lands was only voidable, yet it was urged that in case of a copyhold it would be otherwise, because the lease not being warranted by the custom would be a disseisin to the lord, and, consequently, a forfeiture of the copyhold, which being a great mischief to the infant, the court ought rather to help him, by adjudging such lease to be absolutely void: but, notwithstanding this, it was adjudged that the lease was a good lease till avoided, and that a lease for years by a copyholder without licence

Moor, 105.
2 Leon. 218.
Hutton 102.
Roll. Rep.

Lit. § 547.
Co. Lit. 45.
b. 308. a.
Lev. 6.
Moor, 78.
[This opinion hath been confirmed by what fell

Bro. tit. Leases, 50.
Moor, 663.
Roll. Abr. 729, 730.
3 Mod. 307.
3 P. Wms. 210.

5 Co. 119.
2 Inst. 483.
Moor, pl. 132.
Cro. Eliz. 127. 857.
Poph. 178.
10 Co. 43.
Vide head of Infancy and Age,
Bac. Abr. (l. 3.)

Latch. 199.
Godb. 364.
Ashfield and Ashfield.
Noy, 92.
and Jon. 157. S. C.
which last book says, that it was held to be no forfeiture as to the lord; but that admitting it were, yet it

was a good lease as to all strangers, and that for this reason principally it was ad-

judged, such acceptance made it good.

Cro. Jac.
320. Kett-
ley and
Elliot,
Brownl.
120.
2 Bulf. 69.
Roll. Abr.
731. S. C.
adjudged.

licence is not a disseisin; and admitting it should be a forfeiture in this case, yet if the lord enters for it, the infant may re-enter upon him, and so is at no mischief; and that the infant having accepted the rent at full age, he had made it good and unavoidable.

If an infant takes a lease for years of lands, rendering rent, which is in arrear for several years, then the infant comes of age, and still continues the occupation of the land, this makes the lease good and unavoidable, and, by consequence, makes him chargeable with all the arrears incurred during his minority; for though at full age he might have departed from his bargain, and thereby have avoided payment of the arrears which the lessor suffered to incur during his minority, yet his continuance of possession after his full age ratifies and affirms the contract *ab initio*, and so gives remedy for the arrears of rent incurred from the time of the contract made.

Dalf. 64.
per Curiam.

But if an infant possessed of a term for years sells it for money, and after he comes of full age receives part of the money for it, he shall avoid the grant notwithstanding; for the contract, as said, being void in the commencement, it cannot be made good by any subsequent act.

Co. Lit.
45. b.

By custom in some places an infant seised of lands in socage may at the age of fifteen years make a lease for years, which shall bind him after he comes of age; for the custom makes fifteen his full age for that purpose.

4 Leon. 4.

An infant made a lease for years, and at full age said to the lessee, *God give you joy of it*; this was holden by *Mead* a good affirmation of the lease; for this is a usual compliment to express one's assent and approbation of what is done.

Anon.
2 Leon.
220. 1.

[The father of an infant leased his son's lands for 20 years, and at full age the son, upon the back of the indenture, released all his right to the defendant: it was holden by *Wray, J.* that this lease was made by the father, as guardian, and voidable by the son; and that the indorsement by the son was a good assignment.]

Flow. 212.
Dyer, 209.
Case of the
Duchy of
Lancaster.

If the king within age makes a lease for years, this is binding presently, and cannot be avoided by him, either during his minority or when he comes of age; for the politick rules of government have thought it necessary that he, who is to govern and manage the whole kingdom, should never be considered as a minor, incapable of governing himself and his own affairs.

(C) Of Leases made by Husband and Wife : And herein,

1. Of Leases made by Husband and Wife by the Common Law.

IT is clearly agreed, that if a husband, seised of lands in right of his wife, make a lease thereof by indenture or deed poll, reserving rent, that this is a good lease for the whole term, unless the wife, by some act after the husband's death, shews her dissent thereto; for if she accepts rent, which becomes due after his death, the lease is thereby become absolute and unavoidable; the reason whereof is, that the wife, after her intermarriage, being by law disabled to contract for or make any disposition of her own possessions, as having subjected herself and her whole will to the will and power of her husband, the law thereupon transfers the power of dealing and contracting for her possessions to the husband, because no other can intermeddle therewith, and without such power in the husband they would be obliged to keep them in their own manurance or occupation, which might be greatly to the prejudice of both; but to prevent the husband from abusing such power, and lest he should make leases to the prejudice of his wife's inheritance, the law has left her at liberty after his death either to affirm and make good such lease, or to defeat and avoid it, as she finds most subservient to her own interest.

So, if the wife join in such lease for years by indenture, if not made pursuant to the 32 H. 8. cap. 28. she is after her husband's death at liberty either to affirm it by acceptance of rent, or to dissent to and avoid it by bringing trespass, &c. in the same manner as if she had been no party thereto; for her joining during the coverture, when she was not *sui juris*, but under the power of the husband, will not bind her after his death; and if she chooses to avoid such lease, notwithstanding her joining therein; then it is so absolutely defeated *ab initio* as to her, that she may plead *non dimisit*, because as to any interest that passed from her she did not demise, nor in truth had any power to contract, but the whole interest passed from the husband, and the lessee is in merely by virtue of the husband's contract; and yet, because the lessee by his acceptance of such lease admitted them both to have power to join therein, he must accordingly, during the coverture, declare of the lease by them both, as an essential part of the description of the lease whereby he makes title.

But the indenture or deed poll, whereby such lease was made, being no essential part either of the description or lease itself, because the husband during the coverture might have made it by parol only; therefore, it is neither necessary nor usual for the lessee in his declaration to make any mention thereof.

So also, if the wife's part in such lease were merely void, and her joining therein would have no effect to help the description of the lease, then the lessee ought in his declaration upon such lease

Bto. tit.
Acceptance,
10. tit.
Leases, 24.
Cro. Jac.
332. Jordan
and Wilkes.
2 And. 42.
Plow. 137.

Cro. Jac.
563. Cro.
Car. 165.
406. Cro.
Jac. 617.
Yelv. 1.
Cro. Eliz.
769. Roll.
Abr. 350.

2 Co. 61.
3 Co. 21.
Plow 431. a.
Leon. 102.
Cro. Eliz.
438. 482.
Siv. 109,
110. 112. Cro. Cat. 527.

Yelv. 1.
Willson and
Rich. Cro.
Car. 155.

Hopkins's
case; and
the S. C.
2 Bulf. 13.
obscurely
put, seem
to be.

lease to leave out the wife, otherwise his inserting of her as one of the lessors will vitiate his declaration: therefore, where the husband and wife sealed a lease for years of the wife's lands, and at the same time executed a letter of attorney to a third person to deliver such lease as their deed to the lessee, which he did accordingly, and then the lessee brought an ejectment, and declared of this by baron and feme; to which not guilty being pleaded, this special matter was found; the court, after argument, gave judgment that the plaintiff had failed in his declaration, because, as this case was, it was only the lease of the husband; for the delivery of the deed being essential to make it a complete deed, this ought to have been done by the wife herself in person; for she not being *sui juris* could not by such letter of attorney delegate any power or authority whatsoever to another, but such delegation was merely null and void; and, by consequence, the attorney's delivering it in her name was to no purpose, but it was only the lease of the husband, as being only effectually delivered by him; and, therefore, the plaintiff ought to have declared accordingly; for upon the matter it was no lease by the husband and wife, and then the plaintiff declaring upon it as such, hath failed in his description of the lease whereon he was to recover.

Cro. Jac.
617. Gar-
diner and
Norman.

Accordingly in another case, where in ejectment the plaintiff declared on a lease by the husband only, and not guilty pleaded, the like special matter was found as in the former case, and exception taken to the declaration, because the wife was omitted; yet the court held the declaration good, and disallowed the exception, because her manner of joining in the lease was merely void, as if she had not been named therein, and then the plaintiff in his description of such lease did well to omit her.

Cro. Eliz.
656. Wal-
fall and
Heath, Cro.
Jac. 563.
Dyer, 91.
146. Leon.
192. 204.

But now if the husband and wife join in a lease for years by parol of the wife's lands, rendering rent, or if the husband solely make such parol lease, rendering rent, this determines absolutely by his death, so that no acceptance of rent, or other act done by the wife, will prevent its avoidance; the reason whereof given in the books is, that her assent ought to appear to be given at the time when the lease was made, which without some deed or instrument in writing it cannot do; but this seems a very indifferent reason, when in the case of a lease for years by the husband, solely by deed, her assent appears not at all, but rather the contrary; and yet she may affirm such lease, if she thinks fit, after his death, as well as if she had joined therein; therefore a better reason for this distinction seems to be, that the inheritance and right of the estate continuing still in the wife, notwithstanding the intermarriage, if the husband does nothing to discontinue or devert that estate, all charges of his thereout fall off with his death, which determines his power and interest over the estate; but a lease for years being an immediate contract for or disposition of the land itself, if the same appears in writing duly executed, so that there can be no variation or deviation therefrom attempted by the lessee after the husband's death; the law so far gives countenance to such lease, for the encouragement of farmers and husbandmen, that the same shall continue in force till the wife's actual dissent or

of disagreement thereto; but because there can be no such certainty of the terms of a parol lease, when nothing appears in writing to manifest them; therefore they, like other charges of the husband, fall off and drop with his estate or interest therein.

If the husband and wife make a lease for years of the wife's land, without reservation of any rent, yet it hath been adjudged that this is a good lease by them both during the coverture, and that the wife, after the husband's death, may affirm the same by acceptance of fealty, or bringing an action of waste; so that the reservation of rent is not essential to the existence or continuance of such lease after the husband's death, but only a writing attesting the same, and the wife's allowance and approbation thereof; for as the husband made such lease at first, without any reservation of rent; so the wife, if she thinks fit, may continue the lessee in possession, after his death, upon the same terms.

wife's inheritance, without any fine levied; and on ejectment brought by the wife after the husband's death against the mortgagee in possession, circumstances of confirmation by the wife when discover were holden to be a defence in the ejectment, although there was no actual delivery of the deed. But see *Drybutter v. Bartholomew*, 2 P. Wms. 126.]

The husband being seised of copyhold lands in right of his wife in fee, makes thereof a lease for years, not warranted by the custom, which is a forfeiture of her estate; yet this shall not bind the wife, or her heirs, after the husband's death, but that they may enter and avoid the lease, and thereby purge the forfeiture; and the diversity seems between this act, which is at an end when the lease is expired or defeated by the entry of the lord, or the wife, after her husband's death, and such acts as are a continuing detriment to the inheritance; as wilful waste by the husband; or such acts as tend to the destruction of the manor, as non-payment of rent, denial of suit or service; such forfeitures as these bind the inheritance of the wife after her husband's death; but in the other cases the husband cannot forfeit by his lease more than he can grant, which is but for his own life.

If the husband, seised of a copyhold manor in right of his wife, lets copyhold land, parcel thereof for years, by indenture, and dies, this shall not destroy the custom of demising by copy, because the wife may enter and avoid that lease, the husband having no power by his own act or disposition to bind the inheritance of the wife.

A man seised of lands, in right of his wife, makes a lease for years thereof by parol, and then he and his wife levy a fine to a stranger, and die: it was adjudged, that the conuzee of the fine should avoid this lease; for being made by parol only, it was absolutely void as to the wife, so that no acceptance, or act of hers, after his death, could make it good; and then the conuzee, who came in wholly by the wife, shall take advantage thereof as the wife herself should have done, for the husband's joining in the fine was only for conformity; for the whole estate and inheritance passed from the wife, and nothing from the husband; and of void acts, or when they begin to be so, strangers may have the benefit.

But where the husband and wife by indenture made a lease for ninety-nine years of the wife's lands, though without reservation of

Hut. 102.
Cro. Eliz.
112. Jack-
son and
Mordant.
[In Good-
right v.
Straphans,
Cowp. 1201.
there was a
demise by
way of mort-
gage by hus-
band and
wife of the

2 Roll. Rep.
344. 361.
Cro. Car. 7.
Savern and
Smith. Cro.
Eliz. 149.
Head and
Chaloner,
4 Co. 27.

Cro. Eliz.
459.
Coningby
v. Rulkey.

Cro. Eliz.
216.
Leon. 247.
2 Co. 77.
Harvey and
Thomas.

3 Leon. 153.
Cro. Eliz.
152. Cadec

rent,

and Oliver.
Adjourn.
according
to both re-
porters.

[(a) But the
delivery of a
deed by a
married wo-
man is mere-
ly void.
Perk.

§ 154.]

Cro. Jac.
417. Roll.
Rep. 401.
441.
3 Bulf. 272.
Roll. Abr.
592.
3 Mod. 300.
Quere, if
the husband
in this case
has any, and
what reme-
dy for the
rent incur-
red after the
wife's death,

for the reversion to which it was incident goes to the surviving joint-tenant, but he being in of that by title paramount, the lease has nothing to do with the rent, and the husband, for want of a reversion, can neither distrain nor avow for the same. But *quere*, if he may not maintain an action of debt or covenant in law, or express covenant for payment of the rent, if there were any; & *vide* Bro. tit. *Leases*, 4. Det. 7. Dyer, 28. b. 29. a. Roll. Rep. 442.

Cro. Elis.
287. Moor,
pl. 514.
Grule and
Locroft.
Co. 155.
S. C.

rent, and after joined in levying a fine of the reversion to a stranger; the better opinion was, that the conuzee should hold subject to this lease, for being by indenture, it was not absolutely void (a), but only voidable by the wife after her husband's death; and then when she joins in a fine of the reversion, before her time of election for avoidance thereof comes, this destroys her own power of election, because now she has nothing more to do with the estate; and it cannot transfer a like power of election to the conuzee, because that was a thing merely in action, and peculiar to the wife, in regard of her coverture, and, consequently, the lease is become absolute, and the conuzee shall hold subject thereto.

A. and B. joint-tenants for their lives; A. takes C. to husband; and they, by indenture, let their moiety for twenty-one years, reserving rent; then the wife dies, and B. the surviving joint-tenant, would have avoided this lease, as the wife might have done if she had survived her husband: but it was adjudged, that the lease being only voidable, and not void, *quoad* the wife, by her death this power of avoiding it is gone, and cannot be transferred to the surviving joint-tenant, who claims not under, but paramount her; and then the lease is become unavoidable during the life of the other joint-tenant, for the lease being good at first, the wife's disagreement to make it void, was more necessary than her agreement was to make it good.

Husband and wife, joint-tenants for sixty years, if they or either of them so long live, the husband by indenture lets the land for fifty years, to commence immediately after his decease, and dies, the wife survives; and if this was a good lease to bind the wife, was the question. It was objected, that it could not bind the wife, because it was not to commence till after the husband's death; that he might have outlived the whole term; and therefore it was as if he had granted the term to commence after his death; which being but a grant of bare possibility, had been clearly void. 2. It was objected, that the husband dying before the lease took effect, the interest in the whole term vested in the wife by survivorship, and then the husband's disposition, which took not effect till his death, came too late to prevent it. But, notwithstanding, it was adjudged to be a good lease, and not like the case put of a grant of his term after his death, for there nothing passed till his death but a bare possibility only; but here a good term is created in interest presently, to take effect in possession after his death. As to the second point, the husband having an interest to dispose of, he might in his life-time, have disposed of the whole term, and it would have bound his wife; then here when he hath, by an act executed in his life-time, disposed of an interest in part of the term; this, by the same reason, must be good, and binding upon his wife.

Husband

Husband and wife made a lease for years, by indenture, of the wife's lands, reserving rent; the lessee enters; the husband, before any day of payment, dies; the wife takes a second husband, and he at the day accepts the rent, and dies: it was holden, that the wife could not now avoid the lease, for by her second marriage she transferred her power of avoiding it to her husband, and his acceptance of the rent binds her, as her own before such marriage would have done; for he by the marriage succeeded into the power and place of his wife, and what she might have done, either as to affirming or avoiding such lease, before marriage, the same may the husband do after the marriage.

Dyer, 159.
Roll. Abr.
475. 2 Roll.
Rep. 132.
S. C. cited.

A woman, guardian in socage, marries and joins with her husband, by indenture, in making a lease for years of the ward's lands, yet after her husband's death she may avoid the same; for though the husband has absolute power to dispose of all chattels, either real or personal, whereof he is possessed in right of his wife, and the wardship of the body and land, in this case, is but a chattel; yet the wife being possessed of it in right of the infant, and accountable to him for the profits when he comes of age, the husband's disposition shall not bind her after his death, but that she may avoid it in right of the infant, whose guardian she still continues to be; and her own joining in the lease was not material, because she was then under coverture, and had no disposing power at all.

Plow. 293;
Osborn and
Jay. Co.
Lit. 351. a.
Roll. Abr.
343.

As the wife's acceptance of rent or fealty, &c. will make good and unavoidable leases for years, made by her and her husband, or by her husband solely, if they be by indenture or deed poll; so if the wife die before her husband, the same election and power of affirming or avoiding such leases descends to her issue or heir; for such leases are good, till those who succeed to the estate defeat and avoid them by their disagreement thereto.

3 Bulf. 274.
Roll. Rep.
403.

Therefore, where a woman tenant in tail, having issued by a former husband, after his death married a second husband, and they, by indenture, joined in a lease for years of the wife's lands, rendering rent, and then the wife died without issue by the second husband, so that he was not entitled to be tenant by the curtesy, it was holden, that till the issue by the first husband entered, this lease remained good; and therefore, the husband there recovered in an action of covenant against the lessee, upon issue found for him, that there was no entry made by the wife's issue, because till then the lease was still subsisting, and consequently, the lessee bound by his covenants in such lease.

Yelv. 78.
Jeffery and
Guy.

So, where a man, seised of land in right of his wife, makes a lease for years, rendering rent, and then his wife dies without issue by him, whereby he is not tenant by the curtesy, but his estate determined; yet he may avow for the rent till the heir hath made his actual entry, because the lease was at first good, and drawn out of the seisin of the wife; and therefore, till the entry of the heir, remains good between the lessor and lessee, so that the lessee may maintain an action of covenant, and the lessor distrain and avow for the rent, till the heir hath entered.

9 H. 6. 43.
Bro. tit.
Avowry,
123.
Vaugh. 45.

Of Leases made by Husband and Wife pursuant to 32 H. 8. c. 28.

32 H. 8.
c. 28.

This statute hath made an alteration in the common law, and enabled all husbands, seised of lands in right of their wives, to make leases for twenty-one years, or three lives, observing the directions therein mentioned; which leases bind the wives and their heirs, so that they cannot now, after the husband's death, avoid such leases as they might have done at the common law; but if the directions in that statute are not observed, then the common law takes place, and the wives and their heirs are at liberty to avoid such leases in the same manner as they might have done before.

But as to the several qualifications requisite to make such leases good and binding, they being treated of at large under the head of Leases by Ecclesiastical Persons, letter (E), we shall here only insert one case for the better understanding of the statute.

Cro. Car.
22. Smith
v. Trinder.
[This case
was never
decided, for,
in conse-
quence of
Lord Ho-
bart's
doubts, a
special ver-
dict was
found, and
the matter
was after-
wards ended
by arbitra-
ment.]
(a) Note;
there was
no question
made upon
these words,
if, &c. as
to the con-
tinuance of
the lease,
which, as it

Husband and wife, the husband purchased land to him and his wife, and their heirs, and afterwards he, without his wife, lets this land for sixty years, (a) if they should so long live, rendering 280 l. per ann. rent at the two usual feasts, during the term; then the husband dies; and if this lease should bind the wife, by the 32 H. 8. c. 28. was the question? And it was holden by three justices that it should; for the words of the act are, *That all leases to be made by any person or persons having any estate of inheritance in fee-simple or fee-tail, in the right of their wives, or jointly with their wives, of an estate of inheritance, made before the coverture or after, shall be good, provided that the wife be made a party to every such lease to be made by her husband of any manors, &c. being the inheritance of the wife; and that every such lease be made by indenture in the name of the husband and wife, and she to seal the same, and that the rent be reserved to the husband and wife, and to the heirs of the wife, according to her estate of inheritance therein; so that the wife is appointed to join only when she hath the sole inheritance by the appointment of the rent, to be reserved to the heirs of the wife, and not when she hath a joint estate, as in this case; and then clearly, by the body of the act, the lease by the husband solely is good, and the proviso doth not extend to it.*

which, as it seems, determined by the death of either of them. Cro. Jac. 378. 5 Co. 9.

(D) Of Leases by Tenant in Tail: And herein,

1. What Leases Tenant in Tail might have made by the Common Law.

66. Lit.
45. b.

IF tenant in tail after the statute *de donis* had made a lease for years, and died, this lease was not absolutely determined by his death, but the issue in tail was at liberty either to affirm or avoid it as he thought fit; and the reason why such leases for years were not holden to be absolutely determined by the death of the tenant in tail, who made them, was, either because they were drawn out of

of an estate of inheritance, which by possibility might continue for ever, and therefore was capable of enduring such a lease for years thereof; or because, being executed by the entry of the lessee, there ought to be an act of equal notoriety to defeat and undo it, which if the issue in tail thought fit to wave, the lessee then continued his possession in virtue of the first contract and entry. And this was but a reasonable liberty given to the issue in tail, because it might well be supposed that his ancestor was not qualified to keep all his possessions in his own manurance and occupation, but must necessarily let them out to farmers and husbandmen, who, by their skill and understanding in the arts of agriculture and husbandry, would be best able to preserve and improve the soil; and by their yielding an annual rent or income to the lessor or tenant in tail himself, would enable him equally to provide for the necessities and exigencies of himself and his family; and since the issue in tail, who was to succeed to the inheritance and possessions of his ancestor, might be supposed equally ignorant of the way and manner of improving and managing them to the best advantage, and would therefore be under the like necessity of letting them out to others, and yet, perhaps, not be able to get so good a rent or income for them; therefore, to prevent the charge and trouble of renewing such leases, or the difficulty of finding out new tenants upon every death, the law thought fit not to intermeddle one way or another therewith, but left it to the choice of the issue in tail, whether he would continue them or not. Another reason why the law would not condemn such leases as absolutely void by the death of the tenant in tail, might be, the discouragement that would thereby arise to farmers and husbandmen, who would not be easily induced to take leases, or bestow any great pains or labour upon possessions, which they were to hold by so precarious a title as the life of the tenant in tail only; and therefore, for these and other reasons, such leases for years were not looked upon to be absolutely void and determined by the death of the tenant in tail who made them; but the issue in tail successively, as each came into the estate, was at liberty either to continue or avoid them, as they found convenient; and by this liberty the issue in tail was sufficiently secured against any injury or inconvenience arising from the contracts or leases of his ancestor, and the statute *de donis* in no danger of being impeached, since it was in the issue's own choice to consider thereof, and to govern himself accordingly, either in the affirmance or avoidance of such leases, as he found most for his advantage; therefore, (a) acceptance of the rent, or fealty, or bringing an action for recovery thereof, or an action of waste, were such acts as amounted to a confirmation of the lease, because these plainly manifested his intent to continue the lessee in possession upon the terms of his lease; and by consequence, such issue could never afterwards avoid it during his own life.

(a) 7 Co. 8.
b. Count
of Bedford's
case. Bro.
tit. *Accept-*
ance, 10.
Dyer, 46. a.
51. b. 95.
pl. 40. Bro.
tit. *Accept-*
ance, 13.

If tenant in tail makes a lease to *A.* for twenty years, and the lessee makes a lease to *B.* for ten years, and then the tenant in tail dies, and the issue accepts the rent of *B.* this is no affirmation of the

Leases and Terms for Years.

the lease, because *B.* was under no obligation of paying his rent to him, and is answerable for it over again to *A.* and therefore his payment to the issue in tail was voluntary, and in his own wrong, and the issue's acceptance thereof not conclusive more than if he had received it of a mere stranger; and, by consequence, the issue in tail, notwithstanding such acceptance, may enter and avoid the lease: but if the issue had accepted the rent from *A.* this had amounted to a confirmation of the lease made to *A.*, and, by consequence, he could not after avoid the lease to *B.*, which was derived thereout. But if *A.* had assigned five acres of the land in lease to *B.* for the residue of twenty years, and the issue in tail had accepted the rent from *B.*, this would amount to a confirmation of the entire lease to *A.*, because the rent issuing out of the whole, and out of every part of the land, *B.* as to these five acres, succeeded in the place of *A.* by having his whole interest therein; and then the issue in tail, by acceptance of the rent from one, whose part, as to him, was equally chargeable with the whole rent, hath given his consent, that the whole estate chargeable therewith shall continue, though he chose to take his rent out of part only; for otherwise he would do injustice to *A.*, who would be liable to make recompence to *B.* for the overplus of the rent, and yet have no recompence himself, if the issue might defeat the residue of the lease remaining in his hands.

Dyer, 51. b.
7 Co. 9. a.
1 Roll.
Rep. 260.
3 Leon. 154.
2 Bulf. 44.
4 Mod. 5.

Tenant in tail, before 27 H. 8. c. 10. of uses, made a feoffment in fee to the use of himself and his heirs: and, after, he and his feoffees made a lease for years, rendering rent, and after the statute made, tenant in tail dies seised, and his issue aliens the land by fine before entry upon the lessee, or receipt of the rent: the great question was, if he might after avoid this lease; and by the better opinion of the justices of both benches, *præter Sanders*, the alienee could not avoid it, whether he received the rent or not, for the lease was not absolutely void by the death of the tenant in tail, but only voidable by the issue by his entry; then when the issue, before such entry, conveys over the land to a stranger, the lease, being not then avoided, continues still a charge upon the estate, and the stranger cannot enter to avoid it, because a right of entry can no more be transferred to a stranger than a right of action, and by consequence, the conusee must hold subject thereto, having no means to avoid it.

Co. Lit.
349. a.
Moor, 315.
Dyer, 51. b.

If tenant in tail enfeoffs his eldest son within age, and he after full age makes a lease for years, and then the father dies, whereby he is remitted to the estate-tail, yet he shall not avoid the lease: so, if the son had disseised his father, and had made a lease for years, and then the father had died, by which the disseisin was purged, yet the lease would continue good and unavoidable; because in these cases the estate, out of which the lease was derived, is not defeated, but only the nature of it altered and changed; and the lease for years being an immediate disposition of the land itself, so long as that continues in the same person that made the lease, so long there is an estate capable of enduring the lease, and consequently, the lessor shall not avoid it; but if the

the son after such feoffment or disseisin had at full age granted a rent-charge, common of pasture, &c. and then the father had died, this remitter and alteration of the nature of the estate would discharge the land of those charges; because being granted at first out of a defeasible estate, they were of course liable to be defeated with that estate, and when that estate is defeated and gone, such collateral charges drop and fall off with it; but the lease for years, in the other case, carries the very possession of the land itself, and then the alteration that is made by the remitter can only work upon the reversion which was left in the lessor, not upon the possession of the lessee, which was divided and taken out of the estate before that remitter took effect; and the lease being made when he was at full age, prevents the operation of the remitter as to that lease, which was his own act.

Tenant in tail made a feoffment in fee to the use of himself and his heirs, and after made a lease for years, rendering rent, and died; the issue accepted the rent: it was holden, that this did not affirm the lease, because the issue was remitted to the estate-tail by descent, and so the lease utterly void, being made by the father, then tenant in fee-simple; and the difference between this case and the case next but one above-mentioned, seems to be, that the lease there being before 27 H. 8. cap. 10. the possession passed from the feoffees, and not from the tenant in tail himself, and then when that statute came, it could not execute the possession to the use, as to the reversion which was left in the feoffees; and so the possession of the lessee continued untouched by that statute, and drawn out of the legal possession of the feoffees, and and then the bare remitter of the issue, as to the reversion, could not defeat the possession of the lessee, which was not drawn out of any estate his ancestor had then in possession; but he must avoid it by entry upon the aid and construction of the statute *de donis*: but in this, the lease for years is drawn out of the fee-simple and estate, which the tenant in tail had in possession himself; and then the remitter, which is wrought by the descent, defeating that estate, avoids the lease likewise.

If tenant in tail makes a lease for ten years to begin ten years hence, and dies, and the issue within the ten years enters and makes a feoffment in fee, the feoffee, at the end of the ten years, shall have election either to affirm and make good such lease, or to avoid it; for upon the death of tenant in tail the possession was become vacant, and none had a right to enter but the issue in tail, for the time of the lessee's entry was not yet come; then, when the issue enters generally, his primary right was, in respect of the inheritance, descended to him as issue in tail, and he had no occasion to direct his entry at that time to any other purpose; and therefore his entry shall be intended, in respect of the estate-tail descended to him; and when after such entry he makes a feoffment in fee to a stranger, this transfers the possession just in the same plight as the issue in tail himself had it, without any thing done to determine his election one way or another; and then the same power of election passes incorporated in the feoffment;

ment; and the feoffee, when the time for making use thereof is come, may use it either to determine the lease by ousting the lessee, or to affirm or make it good by acceptance of rent from him.

Dyer, 279. a.
Plow. 436.

If tenant in tail makes a lease for years, to begin after his death, rendering rent, and dies, and the issue accepts the rent, yet *Manwood* was of opinion, that he might notwithstanding enter, and avoid the lease; and the reason he gave was, because the lease did not take effect in possession during his life; *sed* Catlyn *hoc negavit*; and it seems with good reason; for since the estate-tail is an estate of inheritance, capable of enduring such a lease, where the difference is between letting it to begin presently, and letting it to begin after his death, or, as it is in the next-preceding case, to begin ten years hence, when he himself dies in the mean time, does not at all appear; for the lease binds from the time of the making in one case, as well as in the other, though the time of their commencement in possession be different; and since the issue in tail is no more bound by the one than the other, it seems hard and inconsistent to take from him his power of election to continue the one lease, and yet allow it him in the other; therefore it should seem, the lease in either case is (a) absolutely void, but that the issue hath election to continue or avoid it, as he himself thinks fit, and, by consequence, his acceptance of the rent hath determined his election to continue the lease, and then he can never enter after to avoid it.

(a) But *qu.*;
for in *Carth.*
258. in the
case of *Symonds*
and *Cudmore*, it
is said to be
agreed, and
resolved by
the court,
that if te-
nant in tail
makes a
lease of any
of the lands
entailed to
commence
after his
death, this
is void *ab*
initio.

7 Co. 14. a.
Co. Lit.
349. a.
Co. 147.
Moore, 325.

If a tenant in tail makes a lease for life, by which he gains a new reversion in fee during the life of tenant for life, and after he grants a rent-charge, or makes a lease for years, and then the tenant for life dies, whereby he is become again tenant in tail, and the reversion in fee, out of which the rent-charge or lease for years were to take effect, defeated, yet shall the lease or rent continue good against himself, because though they were granted out of a defeasible possession, yet they were granted likewise by him who had the true and ancient right in him, and such grant or lease would have bound both, if the defeasible possession had been in one hand, and the ancient right in another, and both had joined therein: so, by the same reason, when such defeasible possession and ancient right are conjoined in one person, and he makes such lease or grant, though the one fails, yet the other will be called in to support them: so, if such tenant in tail had made a feoffment in fee upon condition to the use of himself and his heirs, and then had made such lease, or granted such rent-charge, and after the condition were broken, yet the lease or grant would still continue good against him during his own life, because made by one who had all the right, both ancient and new, in him at the time of making or granting thereof.

Vent. 357.
Anony-
mous.

A. tenant in tail, remainder to B. in tail, A. makes a lease for the life of the lessee not warranted by the statute of 32 H. 8. cap. 28. and dies, leaving B. in remainder his heir; B. by indenture makes a lease for 99 years, to commence after the death of the tenant for life, rendering rent; then the tenant for life fur-
renders

renders to *B.* upon condition and dies; *B.* suffers a common recovery with single voucher, and dies; the lessee for years enters, and the heir of *B.* distrains for the rent; and if this distress was lawful, was the question? For the lessee it was argued, that it was not; for either *B.* was remitted by the surrender, or he was not; if he was remitted, then the lease for 99 years, which was derived out of the new reversion in fee, and descended to him from *A.* was by such remitter determined; the reversion out of which it was derived being vanished and gone; and then he could not distrain for rent where no lease was in being: if he was not remitted, the acceptance of the surrender being his own act, and but upon condition, then he was still in of the defeasible estate descended to him from *A.*, and, by consequence, his recovery with single voucher could not bind his entail, nor the remainder over; and then when he died without issue, (as to make it a case it should seem he must,) both his defeasible estate by the death of the tenant for life, and his own estate-tail were determined and gone; and consequently, admitting the lease continued, (which it did not,) yet his heir was not entitled to the rent, but those in remainder. But it was adjudged in *C. B.* that the distress was lawful; for the lease for life made by *A.* could be a discontinuance no longer than during the life of the lessee; then when *B.* after the death of *A.* made a lease for 99 years by indenture, he having then the right of the entail in him, clothed with a defeasible fee-simple, this lease, when the discontinuance was at an end, (as it was by the surrender of the tenant for life, or at least by his death,) is good against himself by estoppel, if not in point of interest; and then, he being tenant in tail, the recovery with single voucher binds that estate-tail and remainder, and, by consequence, his heir has a good title to the rent, and his distress well taken for it. *Note*; A writ of error was brought of this judgment in *B. R.* and the case argued, but no judgment appears, nor are the reasons before-mentioned taken notice of in the report; but yet they seem easily deducible from the report, and are the chief reasons (as it should seem) upon which the judgment in *C. B.* could be founded.

A. tenant for life, remainder to *B.* in tail, *B.* lets to *C.* for years, to commence after the death of *A.*, then *B.* suffers a recovery to *D.* and dies; the lease for years holds good against *D.* In this case it must be intended, that the recovery was suffered after the death of *A.*, for during his life *B.* was not tenant to a *præcipe*; then admitting the recovery to be after the death of *A.*, this was after such time as the lease took effect against *B.* so as to be absolutely binding upon him; and when he afterwards suffers a recovery, this bars the estate-tail, in respect of which only the lease was violable, and, by consequence, the recoverer, who has not that estate-tail, must hold subject to the lease, and can no ways avoid it.

So tenant in tail, with power to make leases, &c. made a lease for twenty-one years not pursuant to his power, and then levied a fine, and died, leaving issue; and if the conusee should avoid

Dyer, 51. b.
in margin.

Lev. 167.
Sid. 260.
Raym. 122.
Keb. 778.

Opey and Thomasius. 4 Mod. 6. S. C. cited, and there said by Justice Dolben, that it was neither well stated nor well reported in the books; for upon the roll it was thus: A man leased in fee made a lease for 99 years, if three persons so long lived; then he settled the reversion upon himself in tail, with power to make leases for 21 years, and then he made such a lease, and died; the son, who was the issue in tail, and not the father, (as it is reported in the books,) levied a fine, and sold the reversion; the first lease determined, and the court thought the donee might avoid the second lease, because it never was in the election of the tenant in tail, or his issue, to avoid it, they having conveyed away their estates before this second lease was to commence; for

this lease, as the issue might have done, if the fine had not been levied, was the question? for the lease did not take effect during the life of the tenant in tail; and it was agreed, that (a) if tenant in tail grant a rent, or acknowledge a statute, or make a lease for years to begin after his death, that these are void as to the issue, and not merely voidable; but if tenant in tail makes a lease for years without reservation of any rent, this is not void, but only voidable, because the issue may affirm it by acceptance of fealty. And by all, except *Twisden*, the lease in the principal case was holden not to be absolutely void upon the death of the tenant in tail, but only voidable, because it was an immediate disposition of the land itself, and therefore differed from the cases of collateral charges granted thereout; and they held it to be for the benefit of the issue to have such leases only voidable; and so indeed it is, as appears by all the cases and reasons before mentioned: then this lease not being absolutely void, but only voidable, when the tenant in tail levies a fine, by which he binds the estate-tail, and bars the issue before the time of election for avoidance thereof is come; this does not make the lease indefeasible, but transfers the estate chargeable with the future lease just in the same manner it was in the hands of the tenant in tail, without any act done either to affirm or avoid it; and then the donee, when the lease is to commence in possession, must have the same election of avoiding or affirming it, as the issue in tail would have had; for if the lease was voidable, and the levying of the fine before its commencement had no influence upon it one way or other, then it must continue voidable still, and it must continue so only as to the donee; for the tenant in tail, or his issue, have nothing to do therewith, and, by consequence, if it does not continue voidable as to the donee, then he may use his power either to affirm or avoid it, as he sees most convenient: and a diversity was taken between a voidable lease by tenant in tail, which is to commence *in presenti*, and such voidable lease as is to commence *in futuro*; for (b) if tenant in tail makes a lease for years to begin presently, which is not warranted by 32 H. 8. c. 28. and, consequently, is voidable by his issue, if he in the mean time conveys over the land by fine, the donee shall hold subject to that lease, and shall never after avoid it, because the lessee was then actually in possession of his lease, and so that possession divided and taken out from the inheritance which the donee purchased; and then the right of entry, which would have come to the issue, and was necessary to the avoidance thereof, cannot by the fine be transferred to the donee, who is a stranger; and the issue is bound by the fine from making any use of that right of entry, and, by consequence, the lessee shall take advantage thereof, and hold his lease without avoidance from either; but where such voidable lease is to commence *in futuro*, and before the commencement of it the tenant in tail levies a fine to a stranger, there the election to avoid or continue it passes incorporated in the fine, and it cannot be said to be either a right of entry or a right of action; for the lessee not being yet in possession, no entry is needful or can be made to avoid his lease, and the fine has no effect upon it one way or other,

other, but leaves it just as it was; and, by consequence, being voidable after the fine as much as it was before, the conusee only can use the power of avoiding or continuing it, since the issue is bound by the fine, and has nothing to do with it, and it must continue the same after the fine as it was before, because the time for its commencement was not then come; and it could not be either affirmed or avoided before it had a beginning; and so it should seem to be: and for the same reasons, where tenant in tail makes a lease for years, to begin expressly after his death, this is not absolutely (c) void by his death, but only voidable, notwithstanding the opinion at the beginning of the case.

if tenant in tail makes a lease to commence in present, and conveys away his estate by fine, the conusee must hold it charged with such lease; *scilicet*, where it is

to commence in futuro, because it cannot be avoided before its commencement; but no judgment was given. (a) *Vide* Cro. Jac. 455. Griffin and Stanhope. (b) For which *vide* 2 Lev. 27, 28. Mod. 109. Benson v. Baron and Hudson. (c) But *quare*, & *vide supra*.

Tenant in tail of a manor before 27 H. 8. c. 10. made a feoffment in fee to his own use, and died, and in the time of the issue the statute of uses is made, and after the issue makes a lease for years of a tenement, parcel of the manor, rendering rent, and dies, whereby his issue was remitted by the descent of the fee and freehold in law, without entry, though the first issue was not remitted, by reason of the statute of uses, which executed the possession in the same manner as he had the use (and that was in fee) before entry; and his issue makes a feoffment in fee of the manor, and livery in another part, not in the tenement leased, in the name of the whole: and if this was a discontinuance of this tenement, was the question? *Covenstry* was of opinion it was not, because the issue who made the lease granted it out of the fee and right of the tail, which was in himself at the time of the lease made; and therefore by the remitter of his issue the lease was not void before entry, but only voidable; for he might have made it good by acceptance of the rent from the lessee; and, by consequence, if this was a lease continuing at the time of the feoffment of the manor, this tenement could not pass by the livery made in another part of the manor. But at last the whole court held, that this tenement passed by the feoffment, because by the remitter of the issue the lease for years was absolutely defeated and gone, and the lessee become tenant at sufferance; and if the issue had accepted the rent, this would not have made the lease good, because the reversion and inheritance, out of which it was derived, was by the remitter vanished and gone; and then the continuance in possession of the tenant at sufferance at the time of the feoffment of the manor is no impediment to the operation of the livery upon that tenement, and therefore the remitter destroyed the lease in this case.

Roll. Rep. 260. Bridgman and Charlton.

Tenant in tail, reversion in the crown, makes a lease for years, rendering rent, and dies, leaving B. his son and heir in tail, who accepts the rent, and hath issue C.; then B. commits treason, and is attainted thereof, and by act of parliament all his lands and possessions are forfeited, and given to the king; and if the king was concluded by this acceptance of the rent by the issue so that he shall be adjudged in by him, and could not avoid the lease so long

Dyer, 107. b. 115. a. 332. b. Plow. 560. Hob. 324. 346. Cro. Eliz. 519. Yelv. 150. Godb. 324. 2 Roll. Rep. 421.

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as there was any issue in tail, was the question? And it was adjudged, that by the attainder the estate-tail was determined, and the king in, in point of reverter, and then all leases, charges, &c., of the tenant in tail are determined as if he were dead without issue; the reason whereof, given in the books, is, that if it should be otherwise, the king would have two fees in him, which the law will not allow; and this may be a good reason; but it is such a one as wants another reason to explain it; for the same books agree, that if tenant in tail with the reversion in the king had made a lease for years, and after had levied a fine to the king, that the king in that case should not avoid the lease for years, no more than he should if the remainder in fee had been in a stranger, or in the tenant in tail himself, and yet in these cases the king hath two fees in him, and the law allows them to consist well together; therefore the reason of the difference between the cases seems to be, that where the reversion is in the crown, the crown, by consequence, must be the donor, and give out the estate-tail: now all donations created a tenure between the donor and donee, to which homage, fealty, and other duties and services were incident and annexed, as the conditions whereby the tenant was to hold and continue the enjoyment of his land. Now treason was the greatest violation possible of these duties of fidelity, obedience, and service, whereto the tenant was obliged, as the very terms and conditions upon which the king at first was prevailed upon to give him the land, and which he, when he accepted thereof, undertook to observe, by the solemnity of an oath; so that when the donee commits treason, he breaks the condition whereby he holds his estate, and the king is in for that condition broken, and, by consequence, his title by virtue of that condition is paramount all leases, grants, or charges of the tenant in tail: for they being derived out of his conditional estate can subsist no longer than that does, and by his attainder of treason the condition is broken, and that estate forfeited and gone to the king in reversion who gave it; and, by consequence, all derivative leases or charges thereof are determined likewise: but now when the king has only the remainder in fee, there is no immediate tenure of the king, nor is the tenant obliged to any particular duties or services of homage or fealty to the king, as annexed to his donation, more than any other of his subjects; for he had not his estate of the gift of the king, but of his own immediate donor; and then though the law has given the forfeiture of all estates for treason to the king, of whomsoever held, yet this is a positive law, introduced but lately, and the king in such case is in under or by way of conveyance of the estate-tail, and his title thereto begins but from the time of the treason committed, and, by consequence, he shall hold subject to all leases or charges made by the tenant in tail before that treason committed, as the tenant in tail himself should have done: and in the principal case, where the issue in tail by acceptance of the rent had made good the lease of his ancestor, as against himself, if the remainder in fee had been in the crown, and the issue in tail had been after attainted of treason, though the king should have the forfeiture, yet he should hold

hold it subject to the lease, which the issue by such acceptance had made good against himself; and it should seem likewise, that the king being a stranger, and coming in under the estate-tail, shall be bound by that lease, not only during the life of the issue who accepted the rent, but also as long as there were any issue of the body of the donee; for the king being a stranger cannot have the right of the succeeding issue to avoid it; and whether the right of entry or action, which such succeeding issue would have to avoid the lease, be transferred to the king, depends upon the words and construction of the act of parliament which gives the forfeiture in such case. So, in the case of the fine, where the tenant in tail makes a lease for years, and after conveys the lands by fine to the king, though the king in that case was the immediate donor, and had the reversion in him at the time of the fine levied, yet he should be bound by such lease, because the fine was only a conveyance of record, and passes the estate to the king, as it would do to any other person, and, consequently, the king shall take subject to that lease, as any other person must do; and in the principal case, *where the reversion was in the crown*, though the lease for years had been in every thing warranted by 32 H. 8. c. 28. and the issue in tail after the death of his ancestor had accepted the rent, and then been attainted of treason, yet the king should hold discharged thereof; because by the attainder the estate-tail was forfeited, determined, and gone, as if the tenant in tail had died without issue, and the king was in of his old or immediate reversion.

If tenant in tail makes a lease for years, and dies without issue, the lease is absolutely determined by his death, though it were in all things pursuant to the 32 H. 8. c. 28. so that no acceptance of the rent by him in the remainder or reversion can make it good; for the estate, out of which it was derived, being determined, that likewise must fall off with it; and the intent of the statute was only to, enable the tenant in tail by such leases to bind his *issue*, which in no case before he could do, not to bind or any ways affect those in *remainder* or *reversion* after the estate-tail determined.

So, if tenant in tail makes a lease for three lives according to 32 H. 8. c. 28. this is no discontinuance, but determines with the estate-tail; and where *Cro. Car.* 156. *Salwin* and *Clerk* holds that it is a discontinuance, all the other (a) books are against it; and (b) *Vaughan* says, that case is all false and misreported, and that such lease being warranted by the statute cannot be a discontinuance; because the parliament, to which every man is party, allows of such leases; which, if they were tortious, as all discontinuances are, the parliament would never have allowed; and, therefore, if a warranty was annexed to such lease, yet it would make no discontinuance, because that determines with the estate likewise.

But if such lease for three lives were not warranted by 32 H. 8. c. 28. then it would be a discontinuance, because it was a greater estate than the tenant in tail had power to make, and passed by livery, which took out the estate from the tenant in tail, and turned

3 Co. 34.
Moor, 133.
Co. Lit.
44. a.
Cro. Eliz.
602. Bro.
tit. *Acceptance*, 19.

(a) A. 8 Co.
34. a. Cro.
Eliz. 602.
Co. Lit.
333. a.
Noy, 66.
Sav. 77.
(b) *Vaugh.*
383.

3 Co. 50.
9 Co. 140. b.
2 Roll. Abr.
59. *Walter*
and *Jackson*.

turned it into a reversion in fee, determinable upon three lives : so, if such lease for three lives, not warranted by that statute, were made of parcel of the demesnes of a manor, and then the tenant in tail should lease for life, or convey the manor in fee to another, and the lessee attorn, yet the reversion thereof would not pass, because the first lease was a discontinuance of that parcel, so as the reversion thereof for the time was no parcel of the manor.

Godh. 9.
pl. 12.

Tenant in tail, the remainder in fee, the tenant in tail makes a lease for lives, according to 32 H. 8. c. 28. and after dies without issue, and before any entry he in the remainder grants over his remainder by fine ; and if the conusee of the fine might enter upon the lessee and avoid his lease, was the question ? *Fenner* argued that he could not, because where a freehold is given by livery, it cannot be defeated without entry ; and cited a case where a man made a lease for life, remainder in fee, the tenant for life granted over his estate ; then a *formedon* was brought against the grantee or assignee, and the tenant for life died, pending the suit ; and it was holden by all the justices, (except *Littleton* and divers serjeants,) that the writ should not abate, unless he in the remainder had entered : so here, and then when before entry, he in the remainder grants over his remainder, the grantee shall have it but as a remainder, for so is his grant, and so the estate of the tenant for life, which was not voidable, is made good ; and of this opinion were *Wyndham* and *Periam* : but *Mead* and *Dyer* held, that, by the death of tenant in tail without issue, the lease made by him, though for life, was absolutely void, and not merely voidable, because by his death without issue, the estate, out of which the estate for life was derived, is determined and gone ; and so must the estate for life be also, for *cessante causa cessat & effectus* ; and this seems the better opinion and most consonant to the cases before put ; for the death of the tenant in tail, without issue, was, in law, as much a determination of the lease for life, as if it had been expressly so limited ; and then, when that time comes, the operation of the livery, and the end for which it was made ceases, and there needs no entry to avoid that which by effluxion of time and operation of law is already spent and run out ; and therefore the conusee of the fines comes immediately to the possession both in law and right, and the lessee's continuance of possession after is a wrong and trespass to him, and cannot be by force of the lease which is run out and expired, and, by consequence, must have determined the operation of the livery with it.

Jon. 61, 62.
2 Roll.
Rep. 498.

But if tenant in tail makes a voidable lease for years or life, and dies, and the issue, before entry on the lessee, levies a fine to a stranger, the conusee shall not avoid the lease, because such lease being only voidable by entry, when the issue before entry conveys over the land by fine, the power of entry, which was the only means of avoiding such lease, is by the fine destroyed and gone ; for a right of entry cannot be transferred to a stranger, any more than a right of action ; so, if the tenant in tail him-
self,

self, after such lease, had levied a fine to a stranger, or even to the reversioner, and died, yet they could not avoid the lease ever after, because if they could, it must be by reason of the right of entry transferred by the fine, which would have come to the issue if no such fine had been levied; and the law absolutely condemns all alienations of right only, whether it be right of entry or of action, and consequently in these cases, by such alienation, the lease is become absolute and unavoidable.

A woman, tenant in tail, makes a lease for years, not warranted by 32 H. 8. c. 28. and after takes husband, and they have issue, and then the wife dies; the issue cannot avoid this lease during the life of the husband, because he is tenant by the curtesy of the freehold and reversion expectant thereupon; and though he should surrender his estate by the curtesy to the issue, yet this would not help him to avoid the lease till his death, because his estate, as tenant by the curtesy, is a continuance of his wife's estate, and so long as that lasts, the issue's time for avoiding the lease is not come, and notwithstanding the surrender, yet as to the lessee, who is a stranger, the estate by the curtesy has still an existence and continuance, as if no surrender had been made; for he being a stranger shall not suffer by such voluntary act of the tenant by the curtesy; and (a) *Walsb* was of opinion, that the power of avoiding such voidable leases runs so in privy to the issue in tail, that if such issue should marry, and his wife, after the death of the ancestor in tail, be endowed of the reversion of the lands in lease, that she should not avoid the lease, as her husband, the issue in tail, might have done; because though she be in, in consequence of the estate-tail, yet she is not privy to her husband as to that purpose. Also, it was further held in the principal case, that if the woman, tenant in tail, had before marriage acknowledged a statute, and then married, and died, that this statute should be extendible in the hands of the tenant by the curtesy, and of the issue too, if he came in by surrender of the tenant by the curtesy during his life; but if after such statute the woman had made a lease for years, rendering rent, and then married, and died leaving issue, the statute should not be extended upon the lessee; for as the statute was absolutely void and determined as to the issue, and the lease voidable by him likewise, the statute shall never be set up against the lessee, though the issue in tail thinks fit to waive his power of avoiding the lease; for then that would take away from him the rent, which might be the chief inducement that prevailed on him to affirm such lease; or if such lease were in all respects warranted by 32 H. 8. c. 28. and so not voidable by the issue; yet since the statute fell off, and became void by the death of the tenant in tail, as to the issue it shall never take place against the lessee, because that would take from the issue the rent, which 32 H. 8. c. 28. never intended to permit, but on the contrary, made the issue's enjoyment of the rent the principal reason of their investing the ancestor with power by such lease to bind the issue.

Dyer, 46. b. in margin.
51 b. in margin.
363. b. Co. Lit.
326. a.
338. a. b.
G vide Moor, 30.

(a) In a Bendl. 65. but 2.

But:

2 Roll.
Rep. 499.
Mod. 110.

But if tenant in tail grants a rent-charge, and after makes a lease for years, or lives, warranted by 32 H. c. 28. the lessee shall hold the land charged during the lease, not only in the lifetime of the lessor, but also after his death; by *Jones and Yelverton*: For this rent-charge meddles not with the possession, as the statute in the other cases does; and therefore the lessee, in respect of the possession which he hath, shall be liable to pay the rent reserved to the issue; whereas in the other case, if the statute should prevail, this would deprive the issue from distraining for the rent, by divesting the lessee of the possession whereon the distress ought to be made.

2. What Leases Tenant in Tail may make to bind his Issue, since the 32 H. 8. c. 28.

Co. Lit. 44.

Here we shall premise, that the statute 32 H. 8. c. 28. is an enabling statute, and was made purposely to give the tenant in tail (amongst others) power, by observing the directions therein specified, to bind his issue; so that they shall not now, after his death, avoid such leases as they might have done before by the common law, which was found to be very inconvenient, and a great discouragement to farmers and lessees, who, after they had paid great fines, and been at great costs and charges in buildings, and otherwise improving the lands and tenements so leased to them, were, after the death of their lessors, cruelly expelled and put out (as the statute speaks) by the heirs of the lessors, by reason of private gifts in tail, &c. to their great impoverishment and undoing; therefore to prevent such mischiefs for the future, that statute provides, that all leases to be made of any manors, lands, tenements, or other hereditaments, by writing indented, under seal for term of years, or for term of life, by any person or persons being of full age of twenty-one years, having any estate of inheritance, either in fee-simple or fee-tail, &c. shall be good and effectual against the lessors and their heirs, &c. provided that the said act shall not extend to any leases to be made of any manors, lands, &c. being in the hands of any farmer or farmers, by virtue of an old lease, unless the same old lease be expired, surrendered or ended, within one year next after the making of the said new lease; nor to any grant to be made of any reversion of any manors, lands, &c. nor to any lease of any manors, lands, &c. which have not been most commonly letten to farm, &c. by the space of twenty years next before; nor to any lease to be made without impeachment of waste, or which shall exceed the number of twenty-one years, or three lives, from the day of the making thereof; and that upon every such lease there be reserved yearly, during the same lease, due and payable to the lessors and their heirs, &c. to whom the said lands, &c. after the death of the lessors, would have come if no such lease had been made, so much yearly farm or rent, or more, as had been most accustomedly yielded or paid for the manors, lands, &c. so letten within twenty years next before such lease thereof made, &c.

These

These are the several qualifications requisite to all leases to be made by tenant in tail to bind his issue within the statute, the particular branches whereof being considered under the next head, letter (D), I shall here only mention some scattered cases, not so easily reducible to the method there used.

Tenant in tail, to him and the heirs male of his body, had issue two sons by divers venters, and died, the eldest son entered and made a lease for twenty-one years, reserving rent generally to him and his heirs and assigns, and died without issue, leaving two sisters, his heirs at law; and if by this reservation the rent belonged to the second brother, to whom the reversion descended as heir male of the body of the father, was the question? for if not, then the lease could not bind him within 32 H. 8. c. 28. and it was strongly urged, that the rent could not go to him, because he was neither heir general nor special to the lessor; that the reservation being to the heirs of the lessor, it could not go to the brother of the half blood: but, notwithstanding, it was adjudged to be a good lease, and that the rent should go along with the reversion; for the words of the statute are, that the rent shall be reserved to the lessor and his heirs, or *to those to whom the lands would go if no such lease had been made*; and judges are to expound statutes, so as not to frustrate the design and intent of them; and here the intent was, that *the rent should go along with the reversion*; and so it may here, for the rent naturally follows the reversion, and the second brother is heir to the entail and reversion, though not to the lessor, and heirs *dicuntur ab hereditate*, and therefore shall be taken *secundum subjectam materiam*, & *ut res magis valeat*, to comply with the intent of the statute; and they cited (a) *Austen's case* as a case in point, and so judgment was given accordingly.

Hard. 89.
Cothor and
Merrick.

(a) Dyer,
115.

Two coparceners tenants in tail, the husband of one of them, after her death, being tenant by the curtesy, joins with the other in a lease for years, rendering rent to them and their heirs: this was held no good lease within 32 H. 8. c. 28. because it is not reserved to the donee and his heirs, but to the tenant by the curtesy, jointly with the other; for rent goes strictly as it is reserved by the lessor, and not otherwise; and perhaps as this reservation is, if the tenant by the curtesy should survive, the whole rent would go to him by survivorship, and so the issue of the other coparcener have no recompence for his part of the lands leased; or if the rent should not survive, in regard of their several interests in the lands leased, yet since heirs, in case of the coparcener who joined, must be intended heirs of the body, to bring it within 32 H. 8. c. 28.; so must it likewise be in the case of the tenant by the curtesy, and that may not happen to be the issue inheritable by force of the gift, because he may have issue a son by a former venter, who would be heir of his body; and therefore this seems to differ from the former case, because the same word *heirs*, being applied to both indifferently, cannot be intended to mean one sort of heirs in one case, and another in the other; and the tenant by the curtesy can have no heirs of his body inheritable as heirs of

Latch. 45.
Thompson's
case.

his body to the entail, for he had no estate-tail in him; and therefore heirs of his body, if it should be so construed, cannot be restrained or governed by the same reasoning as will prevail in the case of the coparcener.

Palm. 484.
Litch. 257.
Stacy v.
Clerke.

So, if tenant by the curtesy, and the heir in reversion in tail join in a lease for years, rendering rent to them and their heirs; this lease is not warranted by 32 H. 8. c. 28. by reason of such general reservation, which will carry a moiety of the rent, at least, to the heirs general of the tenant by the curtesy, and so may cut off the issue in tail from that recompence the statute intended them as the consideration of their ancestors being allowed by such leases to bind them.

Godb. 102.
Pl. 119.

Lands were given to baron and feme, and to the heirs of their two bodies; the baron dies, leaving issue by his wife, who makes a lease for years according to 32 H. 8. c. 28. and if this lease was good by that statute, was the question? The objection against it was, that the statute says, the lease shall be good against the lessor and his heirs, and the issue does not claim as heir to the wife only, but as heir to them both; but *Wyndham* and *Rhodes*, Justices, agreed clearly, that the lease should bind the issue within the intent of that statute, for between baron and feme there are no moieties, and the wife surviving is perfect and absolute tenant in tail, and, consequently, may make all such leases as that statute empowers tenants in tail to make.

Dyer, 123.
304. a.
Pl. 53.
2 Roll. Rep.
403. 407.
Ley. 78.

Tenant in tail makes a lease for years, rendering 20 s. rent, and after releases all the rent except 12 d. and dies, and his issue accepts the 12 d., and the question was, if thereby he were concluded to distrain for the other 19 s. reserved upon the lease? And *Sanders* and *Catlyn* were of opinion that he was concluded, but *Whiddon* and *Dyer contra*; and put this case, that if the lessor after such lease, should grant to the lessee that he should hold his lease without impeachment of waste, yet the issue may maintain an action of waste against him, of which there seems no doubt; or that the issue, if he had not accepted the 12 d., might have distrained for the whole 20 s.; for if such release, either of rent or waste, should prevail, the statute 32 H. 8. c. 28. would be totally eluded; but it should seem, the issue's own acceptance of the rent hath concluded him, for his own time, to distrain for any more.

Hard. 93.

If tenant in tail makes a lease for years, reserving the usual rent to his issue, without any reservation to himself, this is not pursuant to the words of the statute; yet *Fleming*, Chief Justice, held it to be a good reservation, and the lease not voidable, for this reason, within 32 H. 8. c. 28. because the issue, for whom the statute chiefly intended to provide, sustains no prejudice.

3 Co. 64. b.

An estate is made to husband and wife, and the heirs of the body of the husband, the husband makes a lease for forty years, rendering rent, and dies, the issue accepts the rent, yet this shall not bind him, because his time for acceptance thereof was not come, the whole being vested in the wife for her life by survivorship.

Tenant in tail makes a lease for *twenty* years, rendering the usual rent, *habendum* from *Michaelmas* next ensuing: this seems a good lease, though it did not begin from the making of the lease, according to the proviso 32 *H. 8. c. 28.* for the intent of the statute was only that the lease should not exceed the number of twenty-one years from the making, which this lease did not; and the case of (a) *Thompson and Trafford*, 35 *Eliz.* in *B. R.* was cited, where such a lease was adjudged by the whole court to be good, and well warranted by the statute; though my Lord *Coke* lays it down for one of his (b) rules, that leases upon that statute are not good, if they do not commence from the day of the making, which perhaps may be reconciled upon the same diversity, where they are under twenty-one years, and where not so; that from the time of the sealing and executing the lease, till the expiration thereof, there does not intervene more than twenty-one years; for if the commencement of the lease be at such a distance, that between the time of the sealing and executing thereof, and the expiration, there do intervene above twenty-one years, then such lease seems to be without any aid from this statute, though the time for continuance thereof in the possession of the lessee be under twenty-one years; for otherwise the tenant in tail might so procrastinate the commencement of the lease, as to have always the greatest part of the twenty-one years running out in the time of his issue, which the statute never intended to countenance.

Dyer, 246. a.
Leon. 148.
& vide
2 *Bendl.* 74.
pk. 58.

(a) *Poph.* 8.

(b) *Co. Lit.*
44. a. 45. b.

So, where one made a lease for ten years, and after made another lease for eleven years, both these leases are good, because they do not in all exceed twenty-one years, and so the inheritance not charged with more than a lease for twenty-one years, which the statute allows.

Leon. 148.

Leases by tenant in tail, or husband seised in right of his wife of copyhold lands, are not within this statute of 32 *H. 8. c. 28.* but remain perfectly as at common law.

Cro. Car.
44.

Tenant in tail made a lease to a feme covert for life, the husband surrenders, and then the tenant in tail makes a lease for three lives and dies; the wife, after the death of her husband, entered, claiming her lease, and dies; and (c) held, that the issue shall not avoid the lease for three lives: and yet a conditional surrender of a former lease hath been expressly held not to be a sufficient surrender to make good any new lease to be made by virtue of this statute; *quare* therefore the difference.

Moor, pl.
1084.
Sydnam and
Capps.
(c) 5 *Co. 2.*
Co. Lit.
44. b.

3. When and in what Cases the Issue in Tail, or Strangers, shall be bound by voidable Leases made by Tenant in Tail.

As this has already been in some measure cleared under the first branch of this head, there remain but a few cases here to be inserted.

Baron and feme, tenants in special tail, with reversion in fee to the baron, the baron dies; *A.* his son and issue in tail having also the reversion in fee, by indenture, in the lifetime of the wife, makes a lease to *B.* for forty years, to begin after the death of the

2 *Bulf.* 72,
43. *Errington* v. *Errington*.
4 *Mod.* 3.
S. C. cited.

wife, rendering rent, and dies without issue; C. his sister, to whom the reversion descended in the lifetime of her mother, levies a fine *come ceo, &c.*, with proclamations to J. S., then the wife, tenant in tail, dies; and if J. S., the conusee of the fine, was bound by this lease, was the question? no judgment is given in the case, but the opinion of the court, upon the first and second argument, seemed to be, that the conusee could not avoid this lease; and the reason they went upon was, because this lease, at first, took its effect out of the estate-tail by way of conclusion, and out of the reversion in fee by way of interest; but the taking effect by way of conclusion was at an end by the death of the issue who made it, because he died before the estate-tail came to him; and so it rested barely upon the reversion in fee, which was well charged therewith; then when C., the sister, inheritable likewise to both the entail and reversion in fee, levied a fine in the lifetime of the mother; this past the reversion in point of interest charged with that lease, and it likewise carried the estate-tail; (not as an estate-tail, for that none could have but the donees and their issue, inheritable by force of the gift; much less when the issue who levied it had then nothing in the entail, her mother, who had the whole estate-tail in her, being then living;) but it passed the estate-tail by way of bar or extinguishment, so that the lease which would have taken place out of the estate-tail by way of conclusion, if it had ever come to the lessor, and which did take place out of the reversion in point of interest, now that the estate-tail is put out of the way by virtue of the fine, then takes place out of the reversion presently, and by consequence the conusee, who has that reversion by conveyance subsequent to the lease, must hold it subject thereto; and the sister could not by the fine convey over the possibility of avoiding the lease, which she herself would have had if the estate-tail had come to her. And some held, that if either the brother or sister, after the father's death, had acknowledged a statute, and then after levied the fine, and then the mother had died, that the estate-tail would be so barred and gone, *quoad* the conusee of the statute, that he might lay on his statute against the conusee of the fine, who hath the fee-simple absolute in him, out of which the lease or statute were to take place; and the issue in tail only is inheritable to the privilege of avoiding such charges by virtue of his estate-tail, not the conusee, who is a stranger, and cannot have that estate. But afterwards when Coke came to be chief justice, he was clear of opinion, that the conusee of the fine was not bound by this lease, for he held the lease to be clearly and absolutely void as against the sister and her conusee, and not merely voidable; indeed if the son had come to the estate-tail, it would have bound him, and so it would his conusee, if he had levied the fine in the life of his mother; but he dying in the lifetime of the mother, who was perfect tenant in tail, the sister was not at all bound by this conclusion, but the lease, as to her, was absolutely void; and then of all *void charges a stranger* may take advantage, though of such as are only *voidable, privies only, and not strangers*, can take advantage. And he

he divided the case, and put it as if the reversion in fee had been in the donor, and such donor had made a lease for years, or granted a rent-charge, and then the issue in tail, in the life of the tenant in tail, had levied a fine, and then the tenant in tail had died, clearly the donee of the fine should hold the land so long as there were any issue in tail; for during that time the donee hath a fee-simple; and though the issue in tail here had the reversion in fee, which he passed to the donee, together with a fee determinable on the failure of issue, and that the donee cannot have two fee-simples in him, yet he hath such a fee-simple as shall be discharged of the lease during the continuance of the estate-tail, if it had not been barred, and the one fee-simple shall not determine or drown the other, but both shall have continuance *quoad* strangers, as if they were in several and distinct persons. And he also held, that if the daughter in this case had entered, and accepted the rent, yet clearly this acceptance would not have bound her, or made good the lease, because, as to her, it was absolutely void, and not merely voidable; and this seems the most reasonable opinion; but no judgment was given, but the case ended by agreement.

A., tenant in tail, with reversion to himself in fee, makes a lease for 99 years, if two lives should so long live, to commence after the determination of a lease for years then in being; *A.* dies, leaving *B.* his eldest son and heir, who being the issue in tail levied a fine to the use of himself and his heirs; the first lease determines, then *B.*, enters upon his father's lessee; and if his entry was lawful, was the question? and it was adjudged, that it was not; for this was an interest derived out of the estate-tail, and also out of the reversion, and being made by tenant in tail was not absolutely void as against his issue, but only voidable; then when the issue, without taking the advantage the law gave him in respect of his estate-tail to avoid this lease, levies a fine of the estate, his estate-tail by such fine is extinguished or barred and gone, and, by consequence, his power to avoid this lease in respect of that estate-tail is gone likewise; and the donee has no power to avoid it, because he is a mere stranger, and no ways in privity of the estate-tail; nor could this power to avoid the lease be transferred to the donee, when the issue in tail had it only in respect of his estate-tail, which is now barred, or rather extinguished, as it was held to be, and so the lease took place of the reversion in fee. *Note.* This case seems to differ from that of *Errington's supra*, where the son, who had made the lease, died without issue in the lifetime of his mother, who was perfect tenant in tail.

Husband and wife tenants in special tail, with remainder to the husband in fee, by conveyance made by the husband, during the coverture have issue a son, the husband dies, the son in the lifetime of his mother levies a fine to the use of himself and his heirs; the wife after makes a lease for twenty-one years without reserving the ancient rent, and so not warranted by 32 *H. 8. c. 28.* and dies, the son hath issue, and by his will devises these lands to the defendant, and dies, the defendant enters upon the lessee, who

Symonds v. Cudmore, 4 Mo. 1. Salk. 338. pl. 3. S. C. Carth. 257. 258. S. C. Show. 370. S. C. 3 Danv. 196. pl. 10, 11. S. C. Skin. 284. 317. 328. S. C. 3 Salk. 335. S. C. 12 Mod. 34. S. C. Holt. 666. pl. 1. S. C. 1 Freem. 502. S. C.

Roll. Abr. 842. Jon. 60. Hutton, 84. Cro. Jac. 687. 2 Roll. Rep. 490. 493. Crozer and Kelsey. Sid. 62.

Keb. 182.
S. C. cited.

(a) 3 Co. 51.
2 Roll. Rep.
491. & vide
3 Keb. 333.
436. 448.

brings ejectment; and it was adjudged in *B. R.* for the plaintiff, and that judgment afterwards affirmed in error in the exchequer-chamber, after divers arguments; and in the case two points were made: 1. If this lease, being made by a jointress within 11 *H. 7. c. 20.* and not warranted by 32 *H. 8. c. 28.* be voidable by the issue in tail, upon the statute 11 *H. 7. c. 20.* in case no such fine had been levied? 2. If the conusee of the fine should have the same power to avoid the lease, either in respect of the estate-tail or the remainder in fee, as the issue should have had, if no such fine had been levied? As to the first point, it was resolved, that this lease was not within the 11 *H. 7. c. 20.* for it was no discontinuance, but only an ordinary lease for years, which the wife might survive; and therefore this differs from a lease for life or lives made by a sole jointress, not warranted by 32 *H. 8. c. 28.* for that makes a discontinuance presently, and is expressly within 11 *H. 7. c. 28.* also this differs from the case put in (a) Sir George Brown's case, that if a woman jointress in tail accepts a fine *come ceo, &c.*, and grants and renders the land for 500 or 1000 years, to evade the act, that yet this is an alienation within the meaning of that act, as much as if she had expressly levied a fine for 500 or 1000 years, because in both cases, after her death, such fine would bind the issue in tail, which that statute intended to prevent; but because such fines passing only an interest for years, and not meddling with the freehold, make no discontinuance, nor can be forfeited with collateral warranty, therefore during the life of the jointress they continue good, she continuing still tenant in tail, as she was before, at least in case of the fine levied by her for years; but after her death the issue in tail may avoid them, because otherwise they would be prejudicial to him in binding his inheritance, and so would be equivalent to a discontinuance; and therefore after the death of the jointress in such case the issue in tail may avoid them by 11 *H. 7. c. 20.* but not before; but this lease for twenty-one years being made in the ordinary form, by indenture, is not within the statute 11 *H. 7. c. 20.* and therefore if the jointress in this case had made a lease for 100 or 1000 years by indenture only, this would be no alienation within 11 *H. 7. c. 20.* because the issue might avoid it by the statute *de donis*; so that there appears a manifest difference between leases for life or lives, and leases for years, and also between leases for years made by fine, and leases for years made only by indenture or deed poll; but if such lease, either for lives or years, were in all things warranted by 32 *H. 8. c. 28.* then they would be good and binding upon the issue. As to the second point, if the conusee of the issue in tail should have the same power of avoiding the lease, either in respect of the estate-tail or the remainder in fee, as the issue himself should have had if no such fine had been levied; it was resolved, that he should not, but that the lease was good, and unavoidable; for notwithstanding the fine levied by the son, the mother continued perfect and absolute tenant in tail; and therefore the lease made by her would not have been absolutely void against the issue, but only

voidable, if he had levied no fine; but now having levied a fine, this hath barred the issue and the entail, so that the issue himself cannot avoid this lease; for he hath nothing to do with the entail; and the conusee cannot avoid it, because he is a stranger to the entail, which could not be transferred to him by the fine, but only be extinguished as an estate-tail; and the statute *de donis* helps only the issue and those in reversion or remainder; and though the fine carried likewise the remainder in fee, and after the death of the wife the entail was not *in esse*, but determined; yet this was only between the conufor and conusee; for as to the feme, and all strangers, the estate-tail continues so long as there is any issue, and no diversity when the fine of the issue is precedent to the lease, and where subsequent; for the lease is good against all but those who were aided by the statute *de donis*; and when the issue in tail by his own act hath extinguished or barred the estate-tail, and destroyed the privy, the lease continues good and unavoidable so long as any of the issue in tail are in being: and if the feme in this case, after the fine levied by the issue, had made a feoffment in fee, and died, the feoffee should have held the land against the issue and his conusee, so long as there were any issues in tail. And if tenant in tail makes a lease for years, and after levies a fine to him in the reversion, and dies, leaving issue, though in this case he in reversion shall be in of his ancient reversion, yet he shall not avoid the lease during the lives of the issues in tail; for as to strangers, the estate-tail hath continuance in right, though as to other purposes he shall be in of an estate in fee; and therefore the difference between this and Sir George Brown's case is, that the lease there for three lives was a discontinuance, and then 11 H. 7. c. 20. gives title of entry to him to whom the interest after the death of the feme should appertain to avoid it; but here this lease for years was no discontinuance, nor at all within that statute; and then it remains at common law, where none but the issue in privy of the estate-tail, or those in reversion or remainder, shall avoid it; and here the estate-tail, as to all strangers, hath continuance, and then the issue cannot avoid it, because he hath no estate-tail; nor the conusee, because a stranger to the entail; and so the lease remains absolute and unavoidable.

If tenant in tail makes a future lease, and dies before it is to commence, such lease is merely void, without more circumstances; but the issue in tail has his election to make it good by accepting the rent, or by distraining and avowry, which amounts to an admittance of the lease, and so estops and concludes the issue to deny it; so that the election of the issue in that case is only to support and make good the lease of some act of his own conclusion, and not an election to avoid it by his own act, because there is no such act necessary; for the law esteems it void *ipso facto* by the death of the tenant in tail, unless the issue doth by some act make it good.

Where leases are voidable only, the same may in some cases be avoided by one person, and yet revived and made good by another, and in some cases an avoidance of such leases by one person con-

Carth. 260.
in the case
of Symonds
and Cud-
more, by
Holt, C. J.
against the
three others,
who doub-
ed.

cludes all others to revive or set them up again; wherein the diversity is between those who at the time of the avoidance have the absolute fee and inheritance in them, and those who have only a temporary and particular estate or interest therein.

7 Co. 35.
Co. Lit.
46. a.

Therefore, if tenant in tail, or bishop, make a lease for years not warranted by the statute, so that the issue in tail or successor may avoid them, if during these leases the temporalities come into the hands of the king by the vacancy of the bishoprick, or the wardship of the issue, and his lands come to the king, or any other, upon the death of the tenant in tail, by reason of a tenure by knight's service; in these cases the king, or other guardian, may avoid these leases in right of the bishoprick or issue, whether made by the ancestor within age, or by the ward himself; but yet the successor, or issue, when they come to the actual possession of these lands themselves, may by the acceptance of the rent, &c., and waiver of the possession, re-establish and set up such leases again: so, where the king for his *primer seisin* avoided a lease for years made by a tenant in tail, yet it was adjudged, that after livery had, the issue in tail had election either to defeat or abide by such avoidance; and therefore if he accepted the rent from the lessee, and waved the possession, this set up the lease again.

7 Co. 9.
Co. Lit.
46. a.

So, if the wife of tenant in tail being endowed of those lands, avoids a lease made by her husband during the coverture, for thirty or forty years, yet after her death the issue in tail, by acceptance of rent, and waiver of the possession, may set up such lease again.

7 Co. 9.
Godb. 325.

So, if tenant in tail makes a lease for thirty or forty years, rendering rent, and dies without issue, his wife *privement enseint* with a son, and the donor enters, and as to himself avoids the lease; then the son is born, and the lessee re-enters; the son at full age may either affirm or avoid such lease, as he thinks fit; for the lease was not absolutely determined or avoided, more than the estate-tail itself, out of which it was derived, but only *secundum quid*, and subject to be set up again upon the birth of the issue, which revived the estate-tail; but if such lease were made by the tenant in tail before marriage, rendering rent, and then he married, and died, leaving his wife *privement enseint*, and the donor enters, and as to himself avoids the lease, yet if the wife be after endowed, the lease is revived as against her, because her estate is *quodam modo* a continuance of the estate-tail of the husband, and therefore revives all charges made by him before the marriage. But if the wife be after delivered of a son, and die, now the issue may again avoid that lease or affirm it, as he thinks fit; or if such lease were made after marriage, and the wife, being endowed thereof, avoid that lease, yet after her death the issue in tail may revive it; for in all these cases the avoidance of such leases being only by those who had a temporary estate or interest in the land, cannot bind those who succeed to the inheritance thereof, but that they may, if they think fit, re-establish and set up such lease again, which, as to them, was at first only voidable, and not absolutely void.

7 Co. 8. a.
Co. Lit.
46. b.

But if a woman be endowed of an advowson, which was appropriated, during the coverture, and she present, and her present

be admitted, instituted and inducted, though the incumbent dies during the life of the dowress, yet is the appropriation defeated and dissolved for ever; because the incumbent, who came in by her presentation, had the whole fee and estate in him, as much as any incumbent ever can have, and, consequently, there can be no reversionary or contingent interest left to revive the appropriation: but if the wife in this case had died before any presentation, then the appropriation had remained untouched; for then nothing had been done to defeat or alter it, and make it presentable; for the actual presentation only defeats and dissolves the appropriation, not the bare power of presenting, without it be reduced into execution.

(E) Of Leases for Lives or Years by Ecclesiastical Persons: And herein,

1. What Leases they might have made by the Common Law, and of the several enabling and disabling Statutes, with some general Observations on them.

AS to leases made by ecclesiastical persons, by the common law, we shall but briefly observe, that all ecclesiastical persons had in former times as full power and authority to lease, grant, or alien their possessions, as temporal persons had, that is, if the grant, &c. made by a sole corporation was with the consent of others, whose confirmation was in such case necessary; for though deans and chapters, masters and fellows of colleges, masters and brethren of hospitals, and such like corporations aggregate, might of themselves alone, without the consent or confirmation of any, have made long leases for lives or years, or gifts in tail or fee, at pleasure; yet bishops, deans, &c. seized in right of their bishopricks, deanries, &c. so archdeacons, prebendaries, parsons, vicars, if they aliened or leased, must have had the consent and confirmation of others, that had the power of confirming in that behalf, and then their grants, &c. were as good as those made by aggregate corporations.

Comp. Incumb. 415.

But the law, as to the capacity of clergymen in granting, leasing, &c. being greatly altered by divers acts of parliament, and those not a little intricate and perplexed, it will be necessary to set down the statutes themselves, to render the cases reducible to them more clear and intelligible.

The first statute concerning leases by ecclesiastical persons, which is also the only statute that gives directions concerning leases by tenant in tail, or husbands seized of lands in right of their wives, is 32 H. 8. c. 28. which provides as followeth: "Where-
" as great numbers of the king's subjects have heretofore taken
" leases of lands, tenements, and other hereditaments, for term
" of years, and divers of them for term of life, and have given
" and paid great fines and sums for the same, and also been at
" great costs and charges, as well in and about great reparations

32 H. 8. c. 28.

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“ and buildings upon their said farms, as otherwise concerning
 “ their said farms; yet notwithstanding the said farmers, after
 “ the deaths or resignation of their lessors, have been, and be
 “ daily, with great cruelty, expelled and put out of their said
 “ farms and takings by the heirs or successors of their said lessors,
 “ or by such persons as have interest therein, after the deaths or
 “ resignations of their said lessors, by reason of privy gifts of en-
 “ tail, or for that the lessors had nothing in the lands, tenements,
 “ or other hereditaments so letten at the time of the leases there-
 “ of made, but only in the right of their wives, or such other
 “ like cause, to the great impoverishment, and in a manner utter
 “ undoing, of the said farmers; for reformation whereof, be it
 “ enacted, &c. That all leases to be made of any lands, tene-
 “ ments, or other hereditaments, by writing indented, under
 “ seal, for term of years, or for term of life, by any person or
 “ persons, being of full age of twenty-one years, having an
 “ estate of inheritance either in fee-simple or fee-tail, in their
 “ own right, or in right of their churches and wives, or
 “ jointly with their wives, of an estate of inheritance, made be-
 “ fore the coverture or after, shall be good and effectual in the
 “ law against the lessors, their wives, heirs, and successors, and
 “ every of them, &c. *Provided* that the said act shall not ex-
 “ tend to any leases to be made of any manors, lands, tene-
 “ ments, or hereditaments, being in the hands of any farmer
 “ or farmers, by virtue of an old lease, unless the same old lease
 “ be expired, surrendered, or ended, within one year next after
 “ the making of the said new lease; nor shall extend to any
 “ grant to be made of any reversion of any manors, lands, tene-
 “ ments, or hereditaments, nor to any lease of any manors,
 “ lands, tenements, or hereditaments which have not most com-
 “ monly been letten to farm, or occupied by the farmers there-
 “ of, by the space of twenty years next before such lease thereof
 “ made; nor to any lease to be made without impeachment of
 “ waste; nor to any lease to be made above the number of *twenty-*
 “ *one years or three lives* at the most, from the day of the making
 “ thereof; and *that upon every such lease there be reserved yearly,*
 “ during the same lease, due and payable to the lessors, their
 “ heirs and successors, to whom the same lands should have come
 “ after the deaths of the lessors, if no lease had been thereof
 “ made, and to whom the reversion thereof shall appertain, ac-
 “ cording to their estates and interests, *so much yearly farm or rent,*
 “ or more, as hath been most accustomedly yielded or paid for
 “ the manors, &c. so to be letten within twenty years next be-
 “ fore such lease thereof made; and that every such person or
 “ persons, to whom the reversion of such manors, &c. so to be
 “ letten shall appertain, as is aforesaid, after the deaths of such
 “ lessors, or their heirs, shall and may have such like remedy
 “ and advantage, to all intents and purposes, against the lessees
 “ thereof, their executors and assigns, as the same lessor should
 “ or might have had against the same lessees; *Provided* also, that
 “ this act extend not to give any liberty or power to any person

“ to

“ to take any more farms, leases, or takings, of any manors, &c. than he should or might lawfully have done before the making of this act; nor extend to any liberty or power to any parson or vicar of any church or vicaridge, for to make any lease or grant of any of their messuages, lands, tenements, tythes, profits, or hereditaments, belonging to their churches or vicaridges, otherwise, or in any other manner, than they should or might have done before the making of this act.”

This act extends only to sole corporations, as bishops, deans, &c. 10 Co. 60. a.
 &c. but as to corporations aggregate, as deans and chapters, &c. though they be seised in right of their churches, this is no enabling statute; for they, by the consent of the major part of them, might have made any leases or grants of their estates without limitation before this statute, and so they might have done after, till by other subsequent statutes they were restrained, this being merely enabling, and not at all restraining them; and though by this statute the sole corporations before mentioned could not, without the consent and confirmation of others, have made leases for three lives, or twenty-one years, yet with confirmation they might have made longer leases, or absolute alienations, of any of their possessions; and therefore to restrain bishops, and other ecclesiastical persons, were the statutes of 1 & 13 Eliz. made, which Moor, 107.
 are as follow :

For the restraining of bishops, the 1 Eliz. c. 19. says, “ That all gifts, grants, feoffments, fines, and other conveyances, or estates from the first day of this present parliament had, made, done, or suffered, or to be had, made, done, or suffered, by any archbishop or bishop of any honours, castles, manors, lands, tenements, or other hereditaments, being parcel of the possessions of his archbishoprick or bishoprick, or united, appertaining or belonging to any of the same, to any person (other than the (a) queen, her heirs and successors), whereby any estate should or might pass from the archbishop or bishop other than for term of twenty-one years, or three lives, from such time as any lease, grant, or assurance shall begin, and whereupon the old accustomed yearly rent, or more, shall be reserved payable yearly during the said term of twenty-one years, or three lives, shall be utterly void; any law, custom, &c. notwithstanding.”

(a) This statute, leaving bishops their former power of granting to the queen, her heirs and successors, was to little effect, for that many estates were granted to the queen, upon design that she should grant them over to others, to prevent

which was the statute 1 Jac. 1. c. 3. made, which disables all archbishops and bishops from granting any of their possessions to the king, his heirs or successors, and makes all such leases, grants, &c. to the king, his heirs or successors, utterly void and of none effect. 11 Co. 71. Gif. Codex. 679.

The statute which disables all other ecclesiastical persons is 13 Eliz. c. 10. which is as followeth: “ And for that long and unreasonable leases made by colleges, deans and chapters, parsons and vicars, and others, having spiritual promotions, be the chiefest causes of the dilapidations and the decay of all spiritual livings and hospitality, and the utter impoverishing of all successors, incumbents of the same; be it enacted, That from henceforth all leases, gifts, grants, feoffments, conveyances,

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"ances, or estates, to be made, had, done, or suffered, by any
 "master and fellows of any college, dean and chapter of any
 "cathedral or collegiate church, master or guardian of any hos-
 "pital, parson, vicar, or any other, having any spiritual or eccle-
 "siastical living, or any house, lands, tythes, tenements, or other
 "hereditaments, being any parcel of the possessions of any such
 "college, cathedral, church, chapel, hospital, parsonage, vica-
 "ridge, or other spiritual promotion, or any ways appertaining
 "or belonging to the same, or any of them, to any person or
 "persons, bodies politick or corporate, (other than for the term
 "of *twenty-one years*, or *three lives*, from the time as any such
 "lease or grant shall be made or granted; whereupon the *accus-*
 "*tomed yearly rent*, or more, *shall be reserved* and payable yearly
 "during the said term,) shall be utterly void and of none effect,
 "to all intents and purposes whatsoever; any law, custom, &c.
 "notwithstanding: *Provided, &c.* that nothing herein extend to
 "make good any lease, or other grant, to be made by any such
 "college or collegiate church within either or both the univer-
 "sities of *Oxford* and *Cambridge*, or elsewhere, within the realm
 "of *England*, for more years than are limited by the private sta-
 "tutes of the same college: *Provided* also, that this act shall not
 "extend to any lease hereafter to be made, upon surrender of any
 "lease heretofore made and now continuing, so that the lease to
 "be made do not contain more years than the residue of the
 "years of the former lease, now continuing, shall be at the time
 "of such lease hereafter to be made, nor any less rent than is
 "reserved in the said former lease."

5 Co. 2.
 4 Co. 76.
 Moor, 253.
 Cro. Jac.
 112. 2 Roll.
 Abr. 466.
 Leon. 306.
 Yelv. 106.
 Mod. 205.
 2 Mod. 56.
 5 Co. 15. b.
 11 Co. 75.
 Roll. Abr.
 378. Roll.
 Rep. 151.

On these statutes we shall observe, 1. That the statute of 1 *Eliz.* c. 19. is but a private or particular statute, and must be specially pleaded, else the court will take no notice of it; but 13 *Eliz.* c. 10. is a general law, whereof the judges are bound *ex officio* to take notice, though it be not pleaded, because it extends to all ecclesiastical persons whatsoever, except bishops, who were before provided for by the 1 *Eliz.* c. 19.

2. It has been adjudged and holden in parliament, that the king was bound by 13 *Eliz.* c. 10. though not named, because the statute was general and for the publick good: but for some time the law was holden otherwise; and therefore, where a lease was made to the king by a dean and chapter, and the king had assigned it over, after that the law came to be holden that the king was bound, the assignee had his lease made good to him in Chancery against the statute, because he could not know the law in a matter so dubious.

Comp. In-
 cumb. 417.

3. That all leases made according to 13 *Eliz.* c. 10. by any single corporation, if not warranted likewise by 32 *H.* 8. c. 28. must be confirmed by those who by law are to confirm the same.

Comp. In-
 cumb. 419.

4. That these statutes of 1 *Eliz.* c. 19. and 13 *Eliz.* c. 10. are merely restraining, so that though bishops, and other ecclesiastical persons, might, with the confirmation of those required by

by law, have made any lease or perpetual grant, yet now no confirmation whatever will make them good for above three lives or twenty-one years.

5. That no lease by an archbishop or bishop for three lives, or twenty-one years, made according to the exception of 1 *Eliz. c. 19.* is good to bind the successor, if it be not in every thing pursuant to 32 *H. 8. c. 28.* unless it be confirmed by the dean and chapter; for leases for twenty-one years, or three lives, being only exempted and taken out from the general disability imposed on bishops by the first part of the act, receive no sanction at all from that act, but as they are taken out to rest upon 32 *H. 8. c. 28.* and therefore though they are for twenty-one years, or three lives, yet if part of the land were not in possession, or if the old lease were not surrendered or expired within one year before the new lease made, or in any other respect, such new lease was not warranted by 32 *H. 8. c. 28.* to bind the successor, there must be the confirmation of the dean and chapter, because at common law such confirmation was necessary; and these leases not being warranted by 32 *H. 8. c. 28.* which is the only statute that enables bishops solely to make leases to bind their successors, remain at common law, and by consequence, without confirmation, are voidable by the successors as much as if they were made for one hundred years or lives.

10 Co. 60. b.
Co. Lit.
45. a.
Moore, 108.

6. That 13 *Eliz. c. 10.* hath been always construed largely and beneficially to prevent all inventions and evasions against the true intent thereof; therefore, where the statute says, master and fellows of any college, yet it hath been often held, that be the college incorporated by that name, or by the name of warden and fellows, or warden and scholars, or warden, fellows, and scholars, or master, fellows, and scholars, or master and scholars, or provost, fellows, and scholars, or by any other name of corporation, and be the college temporal for the advancement of the liberal arts and sciences, or mere ecclesiastical or mixt, that all these are within the restraint of this act. So where the statute says master or wardens of any hospital, be the hospital incorporated by any other name, and be it a sole corporation, or corporation aggregate of many, yet the statute extends to them.

11 Co. 76.
Magdalen
College's
case.

The next statute that made any alteration in these things was 14 *Eliz. c. 11.* which as to houses in cities and towns is as followeth: "Whereas in an act made 13 *Eliz. c. 10.* there is one "branch to avoid certain leases to be made by masters and fellows of colleges, deans and chapters of cathedral or collegiate churches, masters or guardians of any hospital, or by any other parson or vicar, or any other having any spiritual or ecclesiastical living; be it enacted, That the said branch, nor any thing therein contained, shall not extend to any grant, assurance, or lease of any houses belonging to any persons or bodies politick or corporate aforesaid, nor to any grounds to such houses appertaining, which houses be situate in any city, borough, town corporate or market-town, or the suburbs of any of them; but that all such houses and grounds may be granted, demised, and

14 *Eliz.*
c. 11. § 17.

"assured,

“affured, as by the laws of this realm and the several statutes
 “of the said colleges, cathedral churches, and hospitals they law-
 “fully might have been before the making of the said statute, or
 “lawfully might be, if such statute were not, so always that such
 “house be not the capital or dwelling-house used for the habita-
 “tion of the persons abovesaid, nor have ground to the same
 “belonging above the quantity of ten acres: provided that no
 “lease shall be permitted to be made by force of this act in re-
 “version, nor without reserving the accustomed yearly rent at
 “the least, nor without charging the lessee with the reparations,
 “nor for longer term than for forty years at the most; nor any
 “houses shall be permitted to be aliened, unless in recompence
 “thereof there shall be, afore, with or presently after such alien-
 “ation, a good and sufficient assurance made in fee-simple ab-
 “solutely to such colleges, houses, bodies politick or corporate,
 “and their successors, of lands of as good value, and of as great
 “yearly value at the least, as so shall be aliened; any statute to
 “the contrary notwithstanding.”

Comp. In-
 cumb. 423.

Note; This statute makes no alteration of the statute 1 *Eliz.*
c. 19. nor has any relation to it, but only to the statute 13 *Eliz.*
c. 10. and therefore gives no power to bishops to let houses,
 otherwise than according to 1 *Eliz.* *c.* 19.

Cro. *Eliz.*
 564.

Note also; That this statute need not be found by verdict, being
 a general law.

By this statute it is expressly provided, that no lease shall
 be made of such houses in reversion; but by 13 *Eliz.* *c.* 10.
 no restraint being made of such leases, it was found necessary
 to provide against them by another statute, *viz.* the 18 *Eliz.*
c. 11.

18 *Eliz.*
c. 11. con-
 tinued by
 43 *Eliz.*
Note: This
 statute is a
 general law.
 4 *Co.* 76.
 120. 2 *Roll.*
Abr. 465.

Which reciting, that since the making of the 13 *Eliz.* *c.* 10.
 divers ecclesiastical and spiritual persons, and others having spi-
 ritual or ecclesiastical livings, have from time to time made leases
 for term of twenty-one years, or three lives, long before the expira-
 tion of the former years, contrary to the true intent and meaning
 of the said statute; “Be it therefore enacted, That all leases to
 “be made by any of the said ecclesiastical, spiritual, or collegiate
 “persons, or others, of any of the said ecclesiastical, spiritual,
 “or collegiate lands, tenements, or hereditaments, whereof any
 “former lease for years is in being, not to be expired, surren-
 “dered, or ended within three years next after the making of
 “any such new lease, shall be void, frustrate, and of none effect,
 “and that all and every bond and covenant for renewing or mak-
 “ing of any lease, or leases, contrary to the true intent of this
 “act, or of the said act made in the said 13th year, shall be ut-
 “terly void; any law, statute, &c. Provided that this act, nor
 “any thing therein contained, shall extend or be prejudicial to
 “make frustrate or void any lease or leases heretofore made by
 “any of the said spiritual or ecclesiastical persons, or any of
 “them; but that the same, and every of them, are of the like
 “force and effect as they, or any of them, were before the
 “making of this present statute.”

The

The statute of 18 *Eliz. c. 11.* has relation only to the statute of 13 *Eliz. c. 10.* to restrain leases in reversion where above three years of the first lease is then to come, but leaves the statute of 14 *Eliz. c. 11.* perfectly at large as to houses in cities, without making void such leases, or any bonds or covenants concerning them; for as to such houses the statute of 14 *Eliz. c. 11.* is a new law, and sets loose the 13 *Eliz. c. 10.* therefore, where an action of covenant was brought against the Dean of *Lincoln* and one of the prebendaries, upon a covenant made by the Dean and Chapter, by their special names jointly and severally, to make a lease of a house in *London*, though it was argued to be void upon the statute 18 *Eliz. c. 11.* that statute extending only to 13 *Eliz. c. 10.* and not to the 14 *Eliz. c. 11.* which, as to houses in cities, repealed 13 *Eliz. c. 10.* and makes all leases thereof good, so they do not exceed forty years, &c. and are not made in reversion, which was not prohibited by 13 *Eliz. c. 10.* Also, the statute 14 *Eliz. c. 11.* forbids alienations of such houses, except there be full recompence given to the Church at the same time, so-as with such recompence they may alien such houses in fee, which was not permitted by 13 *Eliz. c. 10.* and it was adjudged accordingly. And it is (a) 1 Vent. 245. said, the reason of repealing 13 *Eliz. c. 10.* as to houses in market towns, was to make those places more populous.

Hob. 269.
Crane and
Taylor.

But to avoid the force of those statutes of 13 *Eliz. c. 10.* and 18 *Eliz. c. 11.* and the clause making void bonds and covenants against them, a contrivance was set on foot to this effect: the Dean and Chapter of *Windfor*, in the 35th year of *Eliz.* made an agreement among themselves by lots to have an assurance of a lease to each of them, of certain part of the possessions of their Church; and after the lots cast, whereby every one knew his own lease, they executed the assurance in this manner: the corporation enters into an obligation of 500 *l.* to every canon that was to have a lease, and the payment limited to be within a short time before the expiration of the old lease in being, and the canon the same day entered into an obligation to pay the College 510 *l.* at the same time, if they did make a lease according to a schedule annexed, which schedule was *verbatim* the demise agreed to be made; and it was farther proved, that the intent and agreement betwixt them was, that one 500 *l.* should be stopped for the other 500 *l.* and that the corporation should have only the 10 *l.* for the lease; which matter being disclosed in Chancery, the Lord Keeper *Egerton* made a decree, that the obligation of 500 *l.* made by the Dean and Canons to each canon was void by 18 *Eliz. c. 11.* and in the same case a precedent was shewn between *Fry* and the Dean and Canons of *Wells*, decreed 44 *Eliz.* in Chancery, which was thus: *Fry* gave to the Dean and Canons of *Wells* 1000 *l.* and took an obligation of 2000 *l.*, with condition to repay the 1000 *l.*, and for non-payment brought an action of debt against the Dean and Prebendaries; and obtained a judgment, and made a defeasance thereof; that if they make a lease to him of land then in lease to Sir *Amias Parnes* lett for fifteen years to come, then the judgment should be void; and the truth of the case was, that the 1000 *l.* was paid, and 600 *l.* thereof

(a) 1 Vent.
245.
Moor, 789.
Dean and
Canons of
Windfor v.
Sir Gilbert
Perwin.

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thereof employed in payment of tenths due by the Church; yet by the opinion of *Popham, Anderson, and Periam*, it was decreed in Chancery, that the judgment was void by 18 *Eliz. c. 11.* which makes void bonds and covenants for making leases against that statute of 13 *Eliz. c. 10.* but by way of arbitrament they awarded to *Fry* the 600*l.* that was paid and employed in the affairs of the Church, and after the 43 *Eliz. c. 9. § 8.* was made to extend to judgments in such cases.

Another statute concerning leases made by colleges in the two Universities, and the colleges of *Winchester* and *Eaton*, is 18 *Eliz. c. 6.* which adds one thing more, as followeth: "That no master, provost, president, warden, dean, governor, rector, or chief ruler of any college, cathedral church, hall, or house of learning in any of the universities of *Cambridge* and *Oxford*, nor any provost, warden, or other head officer of the colleges of *Winchester* or *Eaton*, nor the corporation of any of the same, by what title, stile, or name soever they now be, shall or may be called, after the end of this present session of Parliament, shall make any lease for life, lives, or years, of any farm, or any their lands, tenements, or other hereditaments, to the which any tythes, arable land, meadow, or pasture doth or shall appertain, except that the one-third part at least of the old rent be reserved in corn for the said colleges, cathedral churches, halls, and houses, that is to say, in good wheat after the rate of 6*s.* and 8*s.* the quarter, or under, and good malt at 5*s.* the quarter, or under, to be delivered yearly upon a day prefixed at the said colleges, cathedral church, halls, or houses; and for default thereof to pay the said colleges, cathedral church, halls, or houses, in ready money, at the election of the said lessees, their executors, administrators, and assigns, after the rate of the best wheat and malt in the market of *Cambridge*, for the rents that are to be paid to the use of the house or houses there, (and so for *Oxford* and *Winchester*, in totidem verbis,) and in the market of *Windfor* for the rents that are to be paid to the use of the house or houses at *Eaton*, is or shall be sold the next market day before the said rent shall be due, without fraud or deceit; and that all leases otherwise hereafter to be made, and all collateral bonds or assurances to the contrary by any of the said corporations, shall be void in law to all intents and purposes; the same wheat, malt, or money coming of the same, to be expended to the use of the relief of the commons and diet of the said colleges, cathedral church, halls, and houses only, and by no fraud or colour let or sold away from the profit of the said colleges, cathedral church, halls, and houses, and the fellows and scholars in the same, and the use aforesaid; upon pain of deprivation of the governor and chief rulers of the said colleges, cathedral church, halls, and houses, and all other thereunto consenting: but this act, or any thing therein contained, shall not extend or be in any wise prejudicial to any lease to be made of a barn called *Muncken Barn*, with a certain portion of tithes rising, growing, and being in the parish of *Southweck* in the county of *Sussex*, being

" being parcel of the possessions of *Maudlin College* in *Oxford*, so
 " that the term demised in and by the said lease exceed not the
 " number of ten years from and after the feast of *St. Michael the*
 " *Archangel* next coming, neither shall this act extend to any lease
 " to be made by the president and scholars of the college of *St.*
 " *John Baptist* in *Oxford*, to any heir male of *Sir Thomas White*,
 " founder of the said college, which lease shall be made accord-
 " ing to the meaning of the foundation and statutes of the said
 " college, of the manor of *Fisfield*, and no other hereditaments."

In the construction of this statute it hath been holden, that it
 is a private act, because it concerns only those particular places;
 and therefore must be pleaded or given in evidence, or found by
 a jury, otherwise the court is not bound to take notice of it.

Also it is said, that in a declaration upon a lease made by any
 of these colleges it ought to be shewed, that the corn was reserved
 according to the statute; otherwise this may be good cause to move
 in arrest of judgment; but of this it may be doubted; for in the
 case itself, cited in *Leon* (a) for that purpose, it appears that that
 exception was disallowed; for though it does not appear in the
 declaration that corn was reserved, yet it may be that it was re-
 served in the lease; and if not, yet the other party ought to shew
 it; and therefore the exception to the declaration for not shewing
 it was disallowed.

Leon. 333., the objection is stated to be as in the text; but that reference is faulty in another
 respect, inasmuch as it states the judgment to have been arrested for this reason.]

By the statute 22 *Car. 2. c. 11. § 61.* it is enacted, " That for
 " ever hereafter the mayor, commonalty, and citizens of *London*
 " may and shall have a market, to be kept three or four days in
 " the week, as to them shall seem convenient, upon the ground
 " now set out by the assent of the dean and chapter of the ca-
 " thedral church of *St. Paul, London*, for a market-place within
 " *Newgate*, and that the said dean and chapter shall make and
 " give one or more lease or leases of the said ground to the said
 " mayor, commonalty, and citizens, and also of the wall of the
 " said church-yard, abutting severally upon *Paternoster-row* and
 " the *Old Change*, for the term of forty years, reserving the year-
 " ly rent of four pounds for the ground of the said market-place;
 " and two-pence for every superficial foot of the ground or soil of
 " the said wall, as it is now set out by the surveyors of the city
 " and of the said dean and chapter, and so from forty years to
 " forty years for ever, at the like yearly rent, and one year's rent,
 " after the rates aforesaid, to be paid by way of fine for each of
 " the said grounds respectively, upon the making every new lease
 " thereof; which said lease and leases shall be good and effectual
 " in the law, as against the dean and chapter, and their successors,
 " and all persons claiming by, from, or under them, and that no
 " house, shed, or other building, shall stand, or hereafter be erect-
 " ed and fixed upon the said market-place, other than the market-
 " house already built with the consent of the said dean and chap-
 " ter; any thing in this or any other act to the contrary not-
 " withstand-

§ 75.

"withstanding." "And whereas the said parsons or vicars, or
 "some of them, (within the said city of London,) are interested in
 "several glebe lands or grounds, the which they cannot rebuild
 "themselves, nor let such lease or leases as may be an encourage-
 "ment to others to rebuild the same; be it enacted, That the said
 "parsons and vicars, and every of them respectively, be em-
 "powered, and are hereby empowered to let such lease or leases
 "of their said glebe lands or grounds, with the consent and ap-
 "probation of the patron or patrons, and ordinary, for any term
 "not exceeding forty years, and at such yearly rents, without
 "fine, as can be obtained for the same."

Dyer, 69. a.
 Hob. 7.
 Roll. Rep.
 443.

Before we mention any cases, or make any observations on the foregoing statute, it may be necessary to take notice, that at common law if a parson had made a lease for years of his glebe-land, to begin after his death, or granted a rent-charge in that manner, and such lease or grant were confirmed by the patron and ordinary, this would have bound the successor of the parson; because here was the consent and concurrence of all persons interested, and the lease or charge bound immediately from the perfecting of the deed by the parson, patron, and ordinary, though it was not to take effect in possession till after the parson's death; but now no confirmation whatever will make such lease or grant good against the successor, by reason of the statutes made to avoid them.

Hetl. 57.
 Mayor and
 Common-
 alty of
 Winches-
 ter's case.

If a person obtain a grant to build houses on church or college lands, and this be confirmed, (in case where confirmation is necessary,) yet this grant is no alienation against the statutes, but is only a covenant or licence, and nothing else; for the soil remains in the grantor, and, by consequence, the houses built thereon are in him.

Comp. In-
 sumb. 334.

If a parish be upon the design of inclosing lands, and a parson have tithes in kind, and common for beasts thereout, the Chancery may decree him to take a quantity of ground elsewhere, in lieu thereof.

Comp. In-
 sumb. 334.

So, where one had a lease of tithes in kind, it was ordered in Chancery, that a commission should go forth to set out other meadow and ground in lieu thereof; the reason of which cases seems to be, either for the prejudice the publick might suffer, if such recompence in no case should be allowed, or for that the successor of the parson hath no injury thereby, being recompenced in other lands: *sed quare*, why an act of parliament in such cases ought not to be procured? for it should seem the Chancery, as well as the other courts, are bound by all acts of parliament, which are positive laws, and have no liberty of breaking through them, upon any pretence of convenience or necessity, more than other courts.

Hob. 269.
 Noy, 5.

By the statute of 14 Eliz. c. 11. as appears before, all those who were restrained by 13 Eliz. c. 10. have liberty given them to alien houses in cities absolutely, so as at the time of such alienation there be a recompence in lands given to them, and their successors, of as great value as the houses aliened are; but this liberty of aliening, upon such recompence to be given, extends only to houses; for as to lands they have no such power, nor can they exchange

exchange them, to bind their successors, upon any recompence whatsoever: and *quare*, whether such house may be exchanged for lands of greater value, without licence, against the statutes of mortmain?

It is agreed, that corporations of mayor and commonalty, bailiffs and burgeses, and such other lay corporations, are out of all the beforementioned statutes, and may make leases, and other estates, as they might ever have done. Sid. 162.

It hath been adjudged, that a spiritual person not beneficed is not within the 21 H. 8. c. 13. which prohibits spiritual persons from taking leases to farm, &c. for life, years, or at will, in their own name, or in the name of any other person or persons to their use, &c. Deg. 135; Mich. 4 Car. 1. in Scaccar., Clagg and Lampley.

A lease being made to a spiritual person against 21 H. 8. c. 13. and a bond or obligation taken for performance of covenants, the obligee brought an action of debt upon this bond, and had judgment; which proves that the lease was not absolutely void between the lessor and lessee, as the words of the statute are; and though in *Dyer*, where this case is reported, this is not mentioned to be any cause of the judgment; yet *Periam* in 1 Leon. held it to be the greatest cause of the judgment: and so it appears to have been adjudged in another place; for the statute inflicts a penalty of 10 l. for every month that the clerk shall occupy such farm, and therefore it cannot be void; but the leases made void by that statute are only those which spiritual persons before that act, or after had, and before *Michaelmas* then next following were not bargained, sold, or granted away. Dyer, 27, 28. 258. a. Leon. 309. 3 Keb. 436.

In an action upon 21 H. 8. c. 13. against a parson for taking farms, it is a good plea to say, *non habuit seu tenuit ad firmam contra formam statuti*; and the defendant may give in evidence, that the farm was for the maintenance of his house, &c. according to the proviso in the statute for that purpose *. Bro. tit. Action sur le stat. 2. * Would not the general issue nil debet, be as

good, if not more eligible?

Also, the writ grounded on this statute ought to be *qui tam* for the king and party; and therefore a writ, which demanded the whole, was ruled not to be good. But the statute need not be mentioned in the writ. Bro. Action sur le stat. 4.

By another act, intitled, *An act for the erecting of hospitals, or abiding and working-houses for the poor*, it is (amongst other things) provided, That all leases, grants, conveyances, or estates to be made by any corporation so to be founded exceeding the number of twenty-one years, and that in possession, and whereupon the accustomed yearly rent, or more, by the greater part of twenty years next before the taking of such lease, shall not be reserved, and yearly payable, shall be void. 39 Eliz. c. 5. § 2.

As to the persons who may be said to be seised in right of their churches, so as to be empowered by the statute of 32 H. 8. c. 28. to make leases for three lives, or twenty-one years, to bind their successors, it appears to have been adjudged, that a prebendary, though he be seised in right of his prebend, and not in right of his church, may 4 Leon. 51. Aston and Pritcher. Cro. Eliz. 350. War-kinton and Mann, Co.

Lit. 44. b.
3 Bulf. 290.
Bro. tit.
Leases, 9.
Palm. 105.
Comp. Incumb. 325.

yet within the equity of that act make leases for three lives, or twenty-one years, to bind his successor, observing the several qualifications required by the act; for the words of the act being general, all persons having an estate of inheritance in right of their church, with a special exception of parsons and vicars only, shew the intent of the act to include and take in all but those so excepted: and *Popham* said, that in *Dr. Dale's* case, for an house near *St. Paul's* it was so adjudged, and so had been twice adjudged in his experience; and *Fenner* said, it was so adjudged in the case of a treasurer of a church. Besides, prebendaries are ecclesiastical persons, for they are admitted and instituted, and have *locum in choro, & vocem in capitulo*.

Lev. 112.
Sid. 158.
Keb. 576.
Bis v. Hot.
Palm. 105.
Eusden v. Dennis.

So likewise, it hath been adjudged, that a chancellor of a cathedral church may make leases for twenty-one years, or three lives, within this statute, to bind his successor: so, of a treasurer, archdeacon, and precentor; for they are prebendaries, and more, for they are generally chosen out of the prebendaries, and have those dignities superadded or annexed. And though chancellors and treasurers are in some sort ministerial, yet are they not *inter minores ordines*, as the *ostiarii* and *vergers* are, who are only servants to carry candles and wax, keep the doors, &c., but the others are seized in fee in right of their church, &c., and have moreover these dignities superadded. But a case was cited to have been adjudged in the Exchequer, that leases made by the chanters of *St. Paul's* must be confirmed; for it was said, they are not properly chanters, but singing men only, and *minoris ordinis*; but the chanters, properly so called, precentors, &c. are *majoris ordinis*; as the bishop of *Sarum*, in right of his bishoprick, is *præcentor Angliæ*; which shews it to be honorary, and a spiritual dignity.

Bro. tit.
Age, 64. 80.

If a parson, prebendary, mayor, dean, abbot, &c., or any other sole corporation make a lease for years, either upon these statutes, or at common law, though the lessor be under the age of twenty-one years, yet he shall not avoid such lease for that cause; for since they are admitted to exercise such offices or functions, though within age, they are likewise by law supposed capable of doing all things belonging thereto, as other persons of full age may do; and therefore such acts as are done by them in their politick capacity, which is subject to no age or infirmity, as the body natural is, are valid and effectual, notwithstanding their minority, which in such case is not material.

2. Of the Rules to be observed, and Qualifications requisite to the Perfection of Leases by Ecclesiastical Persons: And therein,

Rule 1. Where an Indenture or Deed is necessary.

Co. lit.
44. b.
3 Keb. 379.

The first thing to be observed upon the several statutes before-mentioned concerning leases is, that as well upon the statutes of the 1 *Eliz. c. 19.* & 13 *Eliz. c. 10.* as upon 32 *H. 8. c. 28.* the leases to be made by virtue thereof must be by indenture; for though the statutes 1 *Eliz. c. 19.* & 13 *Eliz. c. 10.* do not re-quire

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quire it, yet in that and all other qualities and properties required by the 32 H. 8. c. 28. (except concurrent leases only), they must follow the pattern thereof. And (a) if the deed be indented, whether it begin *this indenture* or not, it is not material; for notwithstanding that, it is an indenture: on the contrary, if it be not indented, the calling it an indenture will not make it so*.

22.—* If only the form of indenting the parchment, or paper, be wanting, that is not material, for it might even be done in court, and therefore no exception is now taken on such a trifling omission.

(a) 5 Co. 25.
Stile's case.
Co. Lit. 143.
a. 229. a.
Cro. Eliz.
472.
2 Inst. 672.
2 Roll. Abr.

But the most observable thing under this head is, how far a parol lease or agreement by the parson with his parishioner or a stranger for his tithes shall be good, and how far and in what cases not; concerning which there are various cases and opinions in the books, many of which have no foundation from the statute, but stand entirely on their own bottom.

Comp. Incumb. 337. &c.

And herein all the books agree, that if a parson lease or grant over his tithes to a stranger for life or years, or even for a year, that such lease or grant must be in writing; and if it be not, it will be absolutely void; the reason whereof is, because tithes are things which lie merely in grant, and whereof no manual occupation can be; till they are actually collected, they are not things substantive, whereof the property can be changed by the notoriety of livery and seisin, or any actual taking of possession; but their whole essence before they are severed and divided consists only in notion and idea: therefore, without deed, the grantee or lessee can make no manner of title to them; for without that, there is nothing can be done to invest him with the property thereof, but the essence and substance of his title is to be derived from the deed, granting or leasing them to him: and for this reason it is that he must not only have a deed thereof, but must also in pleading shew it with a *profert hic in curia*; for otherwise the court, which is to judge *secundum allegata & probata*, can no more adjudge his title good, than if he had no deed at all: but yet (b) if such grant or lease be made of tithes without deed, and the grantee or lessee sue for them in the spiritual court, the defendant must plead that all the title the plaintiff has is by lease without deed; nor can he suggest this matter to ground a prohibition on; but he ought either to set out his tithes without regarding who hath the title to them, which will discharge him, or he ought to prescribe *in modo decimandi*, and surmise that the tithes belong to J. S. with whom he hath compounded to pay such a sum for all tithes.

Godb. 374.
2 Roll.
Abr. 63.
Cro. Eliz.
188. 249.
Perk. § 62.
Cro. Jac.
317. 613.
10 Co. 92.
Leon. 23.
2 Brownl.
11. 17.
2 Keb. 17.

(b) Leon.
23. Whitby
v. Sanders.

But if a parson lease his rectory or parsonage for years, in this case the tithes and offerings will pass as incident to the rectory, though there be no deed, because the rectory is the principal, and the lease of that being good without deed, the tithes and offerings, which are but as part of or accessory to the rectory, must pass likewise, though they are not named. And some hold, that by such parol lease, the rectory and tithes will pass, though there be no house, but only the church and church-yard.

2 Roll.
Abr. 63.
Latch. 177.
Bro. tit. Incidents, 7.
tit. Leases, 15. 20.
tit. Grant, 44. 59.

If a portion of tithes hath been long used with a chapel, a grant or lease of the chapel, with all the tithes thereunto belonging,

Clayton,
§ 25. Brad-
ford's case.

Comp. In-
cumb. 338.

is a sufficient description to pass the tithes, though generally a portion of tithes ought to be so named. But it does not appear whether in this case the grant or lease of the chapel were by deed or not.

As concerning leases of tithes to the parishioner himself, who ought to pay them, there are variety of opinions in the books, how far such leases or agreements shall be good without writing, if they are made for the life of the parson, or for years, or for one year only, and how far, and in what cases, the assignee of the parishioner shall take advantage of, or be bound by such leases or agreements.

Cro. Jac.

237.

Cro. Eliz.

288. 249.

Noy, 121.

Yelv. 94.

2 Leon. 29.

3 Leon. 357.

Godb. 333.

Palm. 377.

2 Brownl.

117.

Lev. 24.

2 Roll.

Abr. 63.

Godb. 333.

Palm. 377.

Hetley, 31.

107. 122.

Yelv. 94.

Noy, 121.

3 Leon. 257.

2 Brownl.

11. 2 Roll.

Abr. 63.

Godb. 354.

374. Cro.

Jac. 663.

Hetley, 31.

Yelv. 94.

Hawkes and

Brothwith.

2 Roll.

Abr. 63.

Cro. Jac.

668.

Godb. 333.

Palm. 377.

First then, most of the books agree, that if the parson, in consideration of such a sum then paid, or so much annually to be paid, by the parishioner, contract or agree by parol with him, that he shall retain his tithes, or shall be discharged of the payment of his tithes during the life of the parson, or for so many years as he shall be incumbent, this shall be void. And the reason given is, because as a lease, this cannot be good without writing; and as a composition or agreement, it cannot be good, because it is uncertain at the making of it.

But yet some books hold such parol agreement for the life or incumbency of the parson to be good, and that if he demands tithes against it in the spiritual court, a prohibition shall be awarded to stay his suit.

It is held in several books, that though such parol agreement with the parishioner for the life or incumbency of the parson be not good, yet if it be for so many years certain, that this is good, though it be not by deed or writing; because it is in nature of a composition or agreement with the parishioner himself, who ought to pay them; and therefore if he sues in the spiritual court for tithes, against such agreement, a prohibition shall be awarded to stay his proceeding.

So it is likewise held, in pursuance of that opinion, that if the parishioner, after such agreement to retain his tithes for years, makes a lease of those lands to another, that the lessee also shall be discharged of the payment of tithes, because the discharge runs along with the land. But others hold the contrary; and that if the assignee be sued in the spiritual court he shall have no prohibition, because by such parol contract no interest was transferred to the parishioner, but it was only a personal agreement between the parties themselves, and cannot extend to strangers.

But all that hold such parol agreement for years to be good, hold likewise, that, if the agreement were with the parishioner, his executors and assigns, there the executors or assigns of the parishioner, or even their lessee at will, shall take advantage thereof; and if they are sued in the spiritual court, shall have a prohibition, and compel the parson to take his remedy upon the contract; and that if the executors of the parishioner have made a lease over at will, they shall have their remedy over against the tenant at will, who

who came in under the benefit of such a discharge, and therefore ought to be contributory to the charge of it : and that granting such prohibition is a means to compel the parson to seek his true remedy.

And yet we find some cases where such agreement was by deed with the parishioner and his assigns, that the parishioner, or assignee, being sued in the spiritual court, could have no prohibition, because, it was said, the covenant or agreement passed no interest in the tithes ; and therefore, for breach of such covenant, the assignee had no remedy, but by action of covenant on the deed.

Accordingly also several books held, that though such parol agreement for life or years, be not sufficient foundation for granting a prohibition, yet such suit in the spiritual court is a breach of the contract or agreement, for which the party may have remedy by action upon the case, upon the *assumpsit*, that he should hold discharged.

So likewise it is held, in several books, that though such parol agreement to retain for life or years be not good by way of passing an interest, yet if an action of debt be brought upon the statute 2 & 3 E. 6. c. 13. and the agreement be pleaded, and found for the defendant, that this shall be sufficient to bar the plaintiff of the treble damages given by that statute : so if *nihil debet* be pleaded, and such agreement be given in evidence, it is sufficient to excuse the defendant from the penalty of treble damages.

But the best opinion seems to be, that such parol agreement with the parishioner himself for more than one year is void : and even to make good this, it ought not to be entered into till after the corn is sown, because when once the corn is sown, then it is supposed to be *in esse*, and growing all that year ; and then such agreement is in the nature of a sale of a thing or chattel actually *in esse*, which, like sales of other goods and chattels, needs no writing. But if it be for more than one year, then it is in nature of a lease or grant of the parson's right or interest in the tithes, which, before they are *in esse*, consist only in notion ; and therefore, to bind the parson, there ought to be a deed or writing ; and if there be not, he may sue for them in the spiritual court, and shall not be tied up by a prohibition ; and such parol grant or agreement, for more years than one, is not only void for all the years after the first, but in the whole ; for the contract being entire, must be void in all, or good in all, and shall not be good and void by parcels.

But a diversity seems to be taken in some books, between the parson or vicar, and the impropiator ; the parson or vicar, they say, may lease his tithes for one year without deed, but the impropiator cannot, but it will be absolutely void ; and it is said to be so ruled in *Bennet* and *Spel's* case ; and in the case of *Bellamy* and *Balthorp*, where the lease for one year by the impropiator was holden void, being to a stranger of the tithes of the whole parish, by the opposition (a) that follows in saying, "*otherwise it is, if it be a lease of the tithes for a year, by the parson himself,*" it must also be meant of a lease to a stranger, and not to the parishioner himself, who ought to pay them ; and then it follows, that a parson or vicar may lease the tithes of their whole parish for one year to a stranger, without deed, which, it seems, they may do, notwithstanding

Palm. 36.
Aldrich's
case.
Palm. 377.
2 Leon. 73.
Wellock's
case.

2 Leon. 29.
Foph. 140.
Fulcher v.
Griffin.
Godb. 333.
Palm. 377.
Roll. Abr.

43. Brown v. Kinman.

Lev. 24.
Raym. 14.
Keb. 5. 21.
2 Keb. 34.
3 Keb. 24.

2 Brownl.
17. Cro.
Jac. 137.
Hob. 176.
Cro. Eliz.
188. 249.
2 Leon. 296.
3 Leon. 257.
Owen, 103.
Lev. 24.
Raym. 14.
Keb. 5.
Godb. 333.
334.
Litch. 176.
Noy, 89.
Comp. Incumb. 340.

Comp. Incumb. 338.
Litch. 176.
Noy, 89.
Godb. 344.
[(a) The argument from this opposition is drawn entirely from Noy's report : In Godbolt, the right of the parson to demise his

tithes without deed is expressly negatived by Dodderidge, J.; and in Latch, no more is said, than that "the parson may discharge the parishioner of tithes by parol, or lease the rectory, consisting of glebe and tithes, by parol for years."—

Although in the discussion of this question in the cases in the text, a parol demise be generally used in opposition to one by deed, yet the question is not, whether tithes may be leased by parol merely, but whether they may be leased without deed?

And the result of all the cases seems to be, that to pass an interest in tithes, to convey them to a stranger, a deed is absolutely necessary: but that a composition with the parishioner by way of retainer is good without deed. This latter point receives a confirmation, if indeed it want any, from the Kensington case (Adams v. Hewitt, Dom. Proc. 1782.); for in that case the composition was without deed; but when the lords held that the notice there given to determine the composition was not a sufficient notice for that purpose, they necessarily admitted the composition itself to be valid, for there could be no question about the determination of a thing that was void.—In Keddington v. Bridgman, Bunb. 2. a difference is taken between a composition by way of retainer by parol, and an agreement between the parson and his parishioners by parol; the latter, Baron Montague thought would be good for years, being only an agreement that the parson would not sue his parishioners for so many years for tithes; the former, Bury and Price, Barons, held was good only for one year, being by way of contract. But where is the difference between the composition and the agreement in this case? The agreement on the part of the parson, is, that he will not demand tithes in kind for a limited time; on the part of the parishioners, that they will, during that time, pay a sum of money in lieu thereof: but what else is this but a composition? But if a composition be good for one year, it may also be good for more than one year; for the objection is, that tithes, being an incorporeal hereditament, cannot pass without deed; if then they can be retained at all without deed, the more or less time for which they are agreed to be so retained cannot be material. See Noy, 121. Yely. 96.]

Latch. 115.
Vicar of
Anford's
case.
Palm. 423.
S. C. by the
name of
Harris and
Dilworthy.

standing the books abovementioned, as is proved by constant practice: for perhaps it would be difficult and troublesome for the parson himself to collect all the tithes in *specie*, and it may be, several of the parishioners will not take leases, or agree or compound for their own tithes; and therefore, if the parson can find one who will take all that trouble off his hands, and leave him more at liberty to attend his cure, it seems reasonable he should be at liberty to set his tithes (as they call it) to such person for that year: and it would be too troublesome and unreasonable to expect, that upon every such yearly setting of his tithes, he should be forced to be at the expence of a new and formal lease in writing, especially since such setting or leasing is generally made about *Easter*, when the corn is actually growing, and in a good forwardness; and therefore such setting or leasing is rather a sale of chattel *in esse*, than a leasing or making over of a thing only in potentiality or idea; and such sale may be good without deed, as it would be of any other goods or chattels. And why the impropiator himself, in the like case, should not have the same power, seems hard to be accounted for; though, perhaps, in the case where this difference is taken, the vendee or lessee, strictly speaking, could not justify in trover against the owner, as by virtue of the lease *qua* lease without deed. But *quare*, if he had pleaded it as a sale for a valuable consideration, if that would not have altered the case, and made good his justification in taking them after they were seyered?

A parson by parol, leased his tithe hay to the vicar, and the vicar paid the rent for the first year, but finding that the rent was more than the tithe was worth, refused to hold the bargain any longer; and being sued in the Court of Requests, (which was a court of equity,) and not pleading there any notice of his refusal, and sentence and decree being given for the parson, the vicar prayed a prohibition: it was agreed by the court, that if the vicar had received the profits, he was sueable in the Court of Requests for the rent; and that if he had given notice of the refusal of the bargain, he had been discharged of the rent from the time of the notice given, because he had no remedy for the tithes, for that it was a void contract in law: and by Dodderidge and Jones the case is the same, though he hath not given notice.

By ..

By all the cases before-mentioned, it appears how unsettled a point this is; and it is said now to be the constant practice of the courts at *Westminster* not to grant prohibitions upon the suggestions of such agreements, but to leave it to the spiritual court to determine; and if the party thinks himself there aggrieved, he may appeal. And this seems to hold still, as to such parol leases under the term of three years; for if they be above three years, then by the statute of frauds and perjuries, they are made to have the force only of leases at will; and if under three years, yet by that statute there must be yearly reserved two-thirds, at least, of the full improved value of the thing demised.

Comp. Incumb. 339, 340.

Rule 2. When such Leases are to begin.

And herein the statute of 32 H. c. 28. is different from the statutes of 1 Eliz. c. 19. & 13 Eliz. c. 10. for the 32 H. c. 28. requires such leases to begin *from the day* of the making; but by the exceptions in 1 & 13 Eliz. they are to begin *from the making thereof*; and the diversity between these expressions will appear more fully by the following cases, which we will reduce under the following heads:

Co. Lit. 45. a. 5 Co. 6. Mountjoy's case. 3 Keb. 379.

1. When such Leases as have no Date at all, or a void or impossible Date, are to begin.

As to such leases as have no date at all, or a void or impossible date, as the 30th day of *February*, or the 40th of *March*, these must begin from the delivery, for there is no other certain *indicium* of the time of their taking effect; and therefore the delivery, which is solemn and notorious, gives them from thenceforth a sanction, and binds the parties thereto.

Plow. 402. Roll. Abr. 848.

Co. Lit. 46. b. 2 Co. 5. 2 Inst. 674. Yelv. 194. Hob. 140. 2 Roll. Abr. 21. Latch. 61.

2. Such Leases as have a good Date, and are delivered on the same Day: in what Cases the Day of the Date or Delivery is to be taken inclusive, and in what Cases exclusive.

Where leases have a good date, and are delivered on the same day, *habendum* for twenty-one years, without saying for what time or when they shall begin; the leases in this case shall begin from the delivery; for the delivery makes the deed presently to be the deed of the lessor, and when nothing appears to the contrary, the lands contained in such deed shall pass to the lessee at the same time: for otherwise it would be the deed of the lessor to no manner of purpose; and there can be no reason to affix the time when the lands shall pass after one day more than another; therefore the delivery, which in this case makes it the deed of the lessor, shall likewise fix the *terminus a quo* the contract or lease shall begin.

Co. Lit. 46. Comb. Incumb. 340. Roll. Abr. 849.

So, if a lease be made for twenty-one years *habendum* from the making, or from the sealing and delivery, or from henceforth, this shall take effect from the delivery, whether there be a date or not; for the delivery gives sanction to the deed, and before de-

Hob. 140. 5 Co. 1. 2 Co. 5. a. 2 Inst. 674. Moor, 879. Cro. Jac.

264. Cro.
Car. 263.
Dyer, 286.
307.
Hob. 73.
2 Roll. Abr.
520.

(a) Latch.
157. Al-
top's case.

5 Co. 1. 94.
Co. Lit. 46.
Moor, 879.
Cro. Jac.
248. 340.
Cro. Eliz.
766.

Denn v.
Fearnside,
1 Will. 176.
See to the
same effect,
Freeman
v. Wett,
2 Will. 165.
Doe v.
Watton,
Cowp. 189.

Co. Lit.
46. b.
Dyer, 218.
Moor, 41.
5 Co. 1.
2 Inst. 674.
3 Roll. Abr.
520. Roll.
Rep. 137.
3 Bulf. 203.
Cro. Jac.
135. Osborn
and Rider.
Bulf. 177.
S. C.

Moor, 107.
And. 65.
Fox and
Collier.

livery it is no deed at all; and, by consequence, from henceforth, or from the making, must relate to the time of its taking effect as a deed, and not from any other time. And in such case, the day of the delivery is taken inclusive; so that if such a lease be delivered the 20th day of *June*, the lease shall determine on the 19th day of *June* inclusive; and though the lease was delivered at four of the clock in the afternoon, or at any time after, on the said 20th day of *June*, yet that whole day shall be taken inclusive, to prevent clamour and incertainty, by making fractions and divisions in a day. And yet in (a) *Latch*. where one declared of a lease of 25 *March*, *habendum abinde* for a year, rendering rent at *Michaelmas* and the *Annunciation*; and it was objected that the last *Annunciation* was not within the year: but the objection was disallowed; for *abinde* shall be taken a *confectione*, and exclusive of the day.

But if a lease be made to begin a *die confectionis*, or a *die datús*, there the day of the delivery, or the day of the date, is to be taken exclusive, because the preposition *a* is privative of the whole day before which it is prefixed: and therefore, if the lessee in such case should declare of an ejection the day of the delivery or date, it would be against him, because that was before his title began.

[So, where under a power to make leases for twenty-one years, or three lives, *in possession*, and not in reversion, a lease was made to one for three lives, *habendum* from the day of the date thereof, at the usual rent, &c. which lease had all the formal circumstances required by the power; it was holden, that this lease was not warranted by the power, for the demise being *habendum from the day of the date*, the lease was a freehold to commence *in futuro*, and therefore void.]

So, if a lease be dated and delivered the same day, and the *habend.* be a *datu*, or from the date hereof, it has been held, that the whole day of the date is to be taken exclusive; and by consequence, that from the date, and from the day of the date, are all one, if there be a date; but if there be none, then the date shall be taken for the day of the delivery, and that whole to be excluded.

Yet the contrary to this has been adjudged in one case, where an ejection was brought on a lease made 1 *January* 3 *Jac.* *habend. a datu indenturæ prædict.*, and the ejection was the same day, and after verdict for the plaintiff it was moved in arrest, &c. that this lease being made *habend. a datu indenturæ prædict.*, was as much as from the day of the date, as in 5 Co. 1. and then the ejection being alleged the same day, is ill; but all the court resolved, that the date is the time of the delivery, and it differs from the time or day of the date, and therefore the ejection being alleged *postea* the same day was good enough, and the plaintiff had judgment.

So, where the archbishop of *York* 6 *Novem.* 18 *Eliz.* by indenture, made a lease for twenty-one years *habend. a datu indenturæ*, no exception was taken to it, which proves that a *datu indenturæ*

is the same as from the making, and that the day of the date, or day of the making, is not to be taken exclusive in such case, because then the lease would not be warranted by the exception in 1 Eliz. c. 19. which says, other than for three lives, or twenty-one years from the making, which is inclusive of the day of the making.

Ejectment by the successor of a prebendary upon a lease made for life *habend. a datu*; and if this should bind the successor, was thrice argued, and for the plaintiff urged, that it should not; that *a datu* is all one with *a die datús*, and then livery being made the same day that the indenture bears date was void, because it cannot expect. 2. That this was a lease in reversion, not being to begin in point of interest till the day after the making or date, which is not good by 13 Eliz. c. 10. for here the day of the date is excluded. But it was answered and resolved, that in propriety of speech *datus*, or dated in *English*, is the very act of the delivery of the deed; for *datus* in *Latin*, being taken participly, is given or delivered in *English*; and *datus* substantively taken in *Latin*, is the date of the delivery in *English*, which signifies all one; and in *Clayton's* case, the six months were taken the most extensively to make good the deed by enrolment, but to make a word of an equivocal sense as this is, (which may be taken either inclusive or exclusive of the day of the delivery or date of it,) to make the lease void is unreasonable, therefore it shall rather be taken in such sense as may make it good, *ut res magis valeat quam pereat*; and therefore it was adjudged good by the three puisne judges, the Chief Justice *Treby* dissenting, though he was at first of the same opinion, and so also was *Powell*, but afterwards changed it for the defendant; which shews the nicety of these distinctions.

[The distinction made in the preceding cases, and in several of those in the next division, hath been levelled by the decision in the Court of King's Bench in *Pugh v. Duke of Leeds*. In that case, a lease under a power to make leases in possession was made to commence "*from the day of the date*," and on a case made for the opinion of the court on the validity of that lease as a lease in possession, it was holden to be good, upon the ground that the particle *from* might, in the strictest propriety of language, be taken either inclusive or exclusive.]

and commented upon in a very able manner by Mr. *Powell* in his Essay on the Learning relating to the Creation and Execution of Powers.

3 Lev. 438.
Hatter and
Alh.
2 Salk. 413.
pl. 1. S. C.
Ld. Raym.
24

Cowp. 714.
This decision, it should be remarked, hath not been generally assented to in Westminster-hall. The reader will find it ex-

Learning relating

3. Such Leases as have a good Date, but are not delivered till a Week or Month, &c. after, when they are to begin, and how the Declaration on such Leases is to be framed.

And it is to be observed, that every deed shall be intended to be delivered on the same day it bears the date, unless the contrary be proved; and it is the best course (as the law intends) to deliver it on the same day that it bears date: therefore, where in an ejectment the plaintiff declared of a lease dated 1 Novem. *habend. a confessione*, or *a die datús*, *sigillationis* & *deliberationis indenturæ prædictæ*,

2 Inst. 674.
Cro. Jac.
264.

Cro. Eliz.
773. Cro.
Jac. 646.
Dyer, 167.
b. 221. b.

predict., and laid the ejectment 2 *Novem.* though it was objected that the declaration was not good, because it did not appear when the lease was sealed and delivered, and it might be delivered long after the date; and the course is to say, that such a day and year *dimissit per indenturam*, bearing date the same day and year; yet it was adjudged, that the declaration was good, because when he declares that he let by indenture of such a date, it shall be intended to be delivered on the same day, unless it be shewn with a *primo deliberatum* at another day; and he, who pleads a deed of such a date, cannot by replication, or other pleading, maintain it to be delivered at another time, for that would be a departure.

Cro. Jac.
264.

But if the truth be that the lease was sealed and delivered at another time than it bears date, then the plaintiff ought to shew it in his declaration; or the defendant, if it be material for him, may shew in his plea the delivery at another time than the date, and traverse, that it was delivered on the day it bears date.

Cro. Jac.
258. Lew-
ellin and
Williams.

Accordingly, an ejectment was brought of a lease made 12 *Decemb. habend. a primo die*, and upon not guilty, the jury found the lease dated 1 *Decemb. habend.* from henceforth, but delivered 12 *December*, which proves that where the date and delivery were at several times, they ought to be distinguished in the declaration: but the question therein was, whether this lease was the same whereof the plaintiff declared, that is, whether being limited to take effect from henceforth, the day of the date should be taken exclusive, so as to warrant the declaring of a lease *a primo die*? for it was objected, that this did not warrant the declaration, because from henceforth, and from the day of the date, are several commencements, the one beginning on the day it is sealed and delivered, the other the day after. But it was resolved *per curiam*, that they are both one, being a computation up to a time past; and when the lease is sealed at a day after the date, whether it be limited to begin from henceforth, or from the day of the date, yet in pleading it shall be alleged to begin from the day on which it is dated. And Serjeant *Moor* took this diversity in another case, that if one leases land in interest, *habend. a datu*, there, the day of the date shall be taken inclusive, the date and delivery being both on the same day; but where it does not begin in interest at the time it is dated, as where the date and delivery are several, and the *habend.* is *a datu*, there, the day of the date shall be taken exclusive, because it is to commence from the date, that is, from the day of the date, for the date in that case can mean nothing else; since it is not delivered till after; and therefore the computation of its commencement being from a day backwards, that whole day shall be excluded. And perhaps this diversity may reconcile the cases of *Clayton, 5 Co.* and *Osburn and Rider, Cro. Jac.* 135. before put; for in *Osburn's* case the lease was made the same day it was dated, and so began then in interest; but the case cited in *Clayton's* case, to prove the date and the day of the date to be all one, was, from a computation backwards upon the statute of enrolments, which appoints them to be enrolled within six months after the date; and there it was adjudged

adjudged that a deed enrolled upon the last day of the six months, accounting the day of the date exclusive, was yet well enrolled within the statute; but this, as has been observed, was a computation backwards, and that from the date, and from the day of the date, is all one, is only an *unde sequitur* of my Lord Coke's own, from the case of the enrolment; and in his 1 *Inst.* 46. b. where he mentions it again, he cites for it *Clayton's case* and *Dyer*, 286. where that case of the enrolment is reported: And though the case of *Bacon and Waller*, 3 *Bulf.* was adjudged according to *Clayton's case*, that the date and day of the date were all one, and the day to be taken exclusive; so that a lease there dated and delivered 26 *May*, *habendum* from the date, did not begin till 27 *May*; and it appears both by (a) *Bulf.* and *Rolls*, that the judgment therein given was founded on the case of *Lewellin and Williams*, where the date and day of the date were held all one; yet, as it appears, the reason of that case was upon a computation from a time past, and that the lease therein did not begin in point of interest upon the day it bore date, and, by consequence, was no warrant for the judgment that was given in *Bacon and Waller's case*; and then that judgment being founded on the authority of the former case, can be of authority no farther than as it agrees with that former case, and then it is of none at all, because, as appears before, it varied materially from it; therefore, the diversity taken by Serjeant *Moor*, which is likewise warranted by the case of (b) *Osburn and Rider*, seems to remain unshaken, and to be the true distinction for settling the books.

(a) 3 *Bulf.*
203.
Roll. Rep.
387. *Bacon*
and *Waller*.

(b) *Cro.*
Jac. 135.

In ejectment the plaintiff declares of a lease 7 *Jan.* by indenture dated 6 *Decemb.* *habend. a die datus indentura predict.*, and gave in evidence a lease dated 6 *Decemb.* *habend. a tempore consecutionis indentura*, and it was held not the same lease whereof the plaintiff declares, because, says the book, *a die datus* excludes the day. But a better reason seems to be, because it does not agree in point of description with the lease whereof he declares; for if the declaration had been of a lease 7 *Jan.* *habend. a 6 die Decembris*, then by the authority of *Lewellin's case* this had been good; yet being upon a computation from a time past, the day of the date must be pleaded exclusively: but when he declares of a lease 7 *Jan.* by indenture dated 6 *Decemb.* *habend. a die datus*, this must be intended a description of the lease as it is comprised in the indenture; and when he afterwards shews an indenture, containing a lease *habend. a tempore consecutionis*, this is a description of another lease, and not of that which was to begin *a die datus*. And this likewise seems to be the reason, that in another case, where the plaintiff, in bar of an avowry, pleads a lease 30 *March* *habend.* from the feast of the Annunciation next before, and upon traverse of the lease *modo & forma*, the jury found a lease to the plaintiff on the 25th day of *March* for one year from thence next ensuing; and though held not to be the same lease the plaintiff pleaded, because this begins on the 25th of *March* inclusive, and the lease pleaded from the 25th of *March* exclusive, yet the plaintiff had judgment, it being found in substance that the plaintiff

Cro. Jac.
647. *Scavage* and
Parker.

Hob. 73.
Moor, pl.
1188.
Pope v.
Skinner.

plaintiff had such a lease as by force thereof he might have common the 11th of *April* following, &c. but agreed clearly, that if he had declared so in ejectment, it would have been against him, because there he demands and recovers the term, and therefore must set out his title truly, which appears to have been by a lease dated and executed the 25th of *March, habend. from thenceforth*; and therefore a lease executed but the 30th of *March*, and dated the 25th of *March, habend. from thenceforth*, could not be the same, not agreeing in point of description. But if the truth had been that the lease had been executed but the 30th of *March*, then, it seems, he might have declared of a lease then made *habend. from the 25th day of March*, being a computation from a time past, though the lease were dated 25th *March, habend. from thenceforth*, because it did not then begin in interest: But *quare*, if the better way in all these cases, to prevent any mistakes, be not to declare of a lease dated such a day, *habend. from thenceforth*, or from the making, or from the day of the date, or day of the making, &c. exactly as it is in the lease *, with a *primo deliberat.* such a day, if the truth be so, rather than for the lessor to take upon him to judge when the day shall be taken inclusive, and when exclusive, and so as in this case to declare of the *habend' a 25 die Martii*, when in truth the *habend.* was worded from thenceforth; though if the lease had been executed but 30 *March*, it seems that if he had declared of a lease 30 *March habend. a 25 March*, this had been good, for the reasons before-mentioned.

* This is now the form constantly used by good pleaders.

Cro. Car. 502. Loyd v. Gregory.

A lease in reversion was made to commence *ad festum Annunciationis* after the former lease should be determined; and it was objected, that it ought to be *a festo Annunciationis*; yet the court held it to be all one, for that there shall be no fraction of a day: but *quare*, how this would have made a fraction of a day? for there seems to be a whole day's difference, *ad* including the feast-day, and *a* excluding it.

Yelv. 131. Edmonds v. Boothe.

A parson leases by indenture the tithes of 200 acres of land to the owner of the land, of which he, and his wife, and his heirs were seised, *habend. from Mich.* next following to him and his heirs, during the life of the parson: the lessee dies, and his wife had the 200 acres for her jointure, and married *B.*, who let the 200 acres to the plaintiff; the heir of the first husband grants also to the plaintiff the tithes of those lands at will, and he being sued for tithes by the parson against his own lease, brought a prohibition; but a consultation was after granted; for by *Flemming, Fenner*, and *Williams*, the lease being for life, and to begin at a day to come, was void; for though tithes are spiritual, and are not extinct in the land, yet in the conveyance of them they ought to follow the nature of land, rent, or other hereditaments *in esse*, which cannot be granted for life at a day to come. But *Yelverton* and *Croke* thought, that this lease being to the owner of the land, did not enure by way of *interest*, but by way of *discharge*; for as the plaintiff hath pleaded, by force of which the lessee was seised of the tithes to him and his heirs for the life of the parson; they, as judges, could not intend it to be otherwise: and besides, it cannot be intended

by way of discharge, because there are no such words in the lease, and it was more for the lessee's benefit to have it by way of interest, than by way of discharge; for then this would be such a privilege annexed to the land as could not be granted over; whereas here the wife was owner of the land, but the son and heir of the lessee took upon him to be owner of the tithes: and *Yelverton* inclined, that the pleading of the lease, and of the seisin by force of it, was not good.

A lease of houses within 14 *Eliz. c. 11.* may be made for years from a time to come; for that statute does not require them to begin from the making, or day of the making, but only that they do not exceed forty years from the making. Poph. 6.
Thompson
v. Trafford.

And it is said, that a lease for lives being avoided at common law, for that it was made to commence from a time to come, an injunction was granted out of Chancery to continue possession. Comp. Incumb. 341.

A lease to three for their lives, *habend. a die datús*, is good, if livery be made after the day of the date, because till livery nothing passes, and being made after the day of the date, it may then operate presently: *secus*, if livery had been made on the day of the date, because then the operation of it must have been suspended till the next day, which the law will not allow. Moor, 637.
759.

[The dean and chapter of *Worcester* being seised in right of their church of one of the manors of *Charlton*, by indenture bearing date the 26th *November* 1750, for a valuable consideration granted the said manor, of which the premises in question were part, to the lessor of the plaintiff, to hold to him and his heirs from the day of the date thereof for the lives of three persons, under the yearly rents, &c. In the lease, power was given by the dean and chapter to their attorney, to take possession of the premises, and to deliver seisin thereof to the lessee, according to the tenor, effect, and true meaning of the said lease; and in pursuance of such power, seisin was delivered of the premises by the attorney to the lessee, on the 28th day of *May* 1751. The question was, whether this lease being made to commence from the day of the date thereof, and seisin delivered the 28th of *May* following, was good? The court held that it was: that till livery was made, the freehold remained in the dean and chapter: that they would presume that the power given to the attorney was to make livery at any day subsequent to the lease, which, they said, was the true meaning of the deed; for by the warrant of attorney to deliver seisin in the present case, the deed should be substantiated by the livery. Freeman
v. West,
2 Will. 165.

But if a man make a lease of land to hold for life from the day of the date, and make livery by attorney the same day *secundum formam chartæ*, this is a void lease.] Bull. v.
Wyatt,
1 Roll.
Abr. 828.

Butler v. Fincher, 2 Bullstr. 302. 1 Roll. Rep. 219.

*Rule 3. Within what Time the old Lease is to be surrendered;
and herein of concurrent Leases.*

Another rule to be observed in the making of leases upon these statutes is, that if there be an old lease in being, it must be surrendered, Co. Lit.
44. b.
5. Co. 2.

Moor, pl.
1084.

[(a) The
lessor of the
plaintiff,
being a pre-
bendary of

rendered, expired, or ended within a certain time after the making of the new lease; and such surrender must be absolute, and not conditional (a); for then the intent of the statute might be easily evaded, by setting up all such old leases again, upon breach of the condition.

Sarum, brought an ejectment to avoid a lease made by his predecessor, as not being conformable to the above proviso in the stat. 32 H. 8. His objection was, that the surrender made of the former lease was with a condition, that if the then prebendary did not within a week after grant a new lease for three lives, the surrender should be void; whereby, as it was contended for the plaintiff, the old term was not absolutely gone, but the lessee reserved a power of setting it up again. But the court, after two arguments, gave judgment for the defendant; this being within the intent of the statute, which was, that there should not be two long leases standing out against the successor. Here, the new lease was made within the week, and from thence it became an absolute surrender both in deed and law. And the whole was out of the lessee, without further act to be done by him. In the proviso in this act, there is the word *ended* as well as *surrendered*; and can any one say the first lease is not at an end? This was no more than a reasonable caution in the first lessee, to keep some hold of his old estate, till a new title was made to him. *Willson ex dem. Eyres v. Carter*, 2 Str. 1201.]

Roll. Rep.
32. Sir
George
Frevil v.
Ewebank.
Comp. In-
cumb. 346.

And such surrender may be safely made either to a corporation sole or aggregate, upon their promise to make a new lease; for if any single person, or sole corporation make such promise, and refuse after to make the lease, an action on the case shall lie against them; and if such promise be made by a corporation aggregate, though no action will lie against them, because being a corporation they cannot be bound without deed, yet the person who surrendered may sue in equity, and compel them to a specific performance of their promise, and to make a new lease: but such suit must be against some of them by name, as the dean in particular, and the chapter of the same place generally: and such suit in equity seems the best way in case the surrender was made to a sole corporation or single person, because in the action at common law, damages are to be recovered only, but no new lease made, as will be decreed in equity. But now since the statute of frauds and perjuries, which requires all surrenders to be in writing, it is usual to have a covenant from the person or corporation, to whom the surrender is made, that they will within such a time make a new lease under such and such terms; but, as it seems, that statute does not extend to surrenders in law, by the taking of a new lease in writing.

29 Car. 2.
c. 3.

The statute of 32 H. 8. c. 28. provides, that such old lease shall be expired, surrendered, or ended within one year next after the making of the new lease; and the statute 18 Eliz. c. 11, enacts, that all leases to be made by any of the ecclesiastical, spiritual, or collegiate persons, or others, within 13 Eliz. c. 10. of any lands, &c. whereof any former lease, &c. for years is in being, and not to be expired, surrendered, or ended within three years next after the making of any such new lease, shall be void, and of none effect.

Poph. 9.
Plow. 106.
Comp. In-
cumb. 345-
6.

And a surrender in law by the taking of a new lease, either to begin presently, or at a day to come, seems a good surrender within these statutes; for by taking such new lease, though it be to commence at a future day, the first lease is presently surrendered and gone, and shall not continue good till the day on which the second lease is to commence; but by acceptance of such second

lease

lease the first is immediately determined; because both leases cannot consist together, and the first cannot be dissolved or surrendered in part, and therefore must be surrendered for the whole.

One *Small* being possessed of the manor of *Paddington* by a lease for years from a bishop, the bishop made a lease to another for three lives, and before livery the tenant surrendered his former term; it was held, that this surrender was made in time, and the second lease good, because it was no complete lease till livery, and before that, the first lease was surrendered and gone. Degg. 130.
Small's case.

And this rule, that if there be any old lease in being, it must be surrendered, expired, or ended within the times before-mentioned, is necessary not only when bishops, and other sole corporations, mentioned in 32 *H. 8. c. 28.* make leases by authority of that statute for twenty-one years, or three lives, without the assent or confirmation of others, but also when any spiritual or ecclesiastical corporation sole (other than bishops) do make such leases, though with the consent and confirmation of those who by law are to confirm the same, and also when any spiritual, ecclesiastical, or collegiate corporation aggregate make such leases whereto no confirmation of others was ever requisite: for the better understanding whereof, it will be necessary to consider the learning of concurrent leases, and what persons, upon the several statutes before-mentioned are capable of making them, and in what manner. Comp. In-
cumb. 343.

To begin then with bishops: it is to be observed, that at common law, bishops, with the confirmation of their dean and chapter, might have aliened the possessions of their church for ever, or have made leases for what term of years they thought fit; and this would have bound their successors, though it were for 5000 years: but a bishop, without such confirmation, could not have made a lease to bind his successors, though but for one year; both of which being great mischiefs, were remedied by 32 *H. 8. c. 28.* and 1 *Eliz. c. 19.* For whereas before 32 *H. 8. c. 28.* bishops could not make any lease at all to bind their successors, unless it were confirmed by the dean and chapter; now that statute enables the bishops alone, without such confirmation, to make leases of all or any of their possessions, so they do not exceed three lives, or twenty-one years; but if bishops had a mind to make leases or grants for any longer term, or in any other manner than this statute warranted, then such leases or grants were out of the protection of this act, and remained perfectly at common law, as they were before, and, by consequence, must have the like confirmation of the dean and chapter, in order to bind the successor, as they must have in all cases at common law: and because it was found by experience, that many bishops made an ill use of this power, and chose to make leases for long terms of years, rather than keep within the bounds this statute had prescribed them, and sometimes to make absolute alienations of their possessions, and then get the dean and chapter to confirm such leases and alienations, whereby the successor was oftentimes left without sufficient to keep up hospitality, or sustain his dignity; therefore, to remedy this mischief was the statute Moor, 107.
And. 65.
Fox and
Collier.
Leon. 36.
3 Leon. 131.
Palm. 464.
466, 467.
Latch. 241.
Leon. 59.
Co. Lit. 45.
Ley, 78.

Statute of 1 *Eliz. c. 19.* made, which makes void all gifts, grants, &c. or estates of any honours, castles, manors, lands, tenements, or hereditaments, being parcel of the possession of the bishoprick, (other than for twenty-one years, or three lives,) so that now, after this statute, no confirmation whatever will make good any Bishop's lease, if it exceed that term, because then the statute makes it void, and, by consequence, not capable of receiving any sanction from a confirmation: but upon these statutes was the concurrent lease invented, which has generally obtained, and been held good, and is in this manner.

Moor, 107.
And. 65.
Leon. 36.
3 Leon. 131.
Palm. 464.,
&c.
Latch. 241.

If a bishop solely makes a lease for twenty-one years according to the statute of 32 *H. 8. c. 28.* and within four or five years, or more, before the end of that lease makes a new lease to another for twenty-one years, to begin from the making, &c. this second lease, if it be confirmed by the dean and chapter, and be in every thing else pursuant to the exception in the 1 *Eliz. c. 19.* is good as a concurrent lease, for these reasons: 1. Because such lease, though it be not good within the 32 *H. 8. c. 28.* by reason the first lease is not surrendered or expired within a year after the making thereof; yet being confirmed by the dean and chapter, it remains a good lease at common law, and then if it be not void within the exception of 1 *Eliz. c. 19.* the successor shall be bound; and that it is not void within that statute, appears both from the letter and meaning of the exception; for the words are, *other than for twenty-one years, or three lives, from such time as any such lease shall begin;* now this second lease does not exceed twenty-one years from the time it begins, being for twenty-one years only from the making, and so within the express words of the exception. 2. This is not void within the meaning of the exception, because for so many years as were to come of the first lease this is good only by estoppel, and not in interest; for the second lessee can have no benefit of it so long as the first lease endures, and then against the successor there is in effect no more than a lease for twenty-one years; for the second lease, being in effect void for all the years that are to come of the first lease, those years that are to come of the first lease and those that will then remain of the second lease make in all no more than twenty-one years at one time, and so not against the meaning of that exception. 3. Such second lease is so far from being prejudicial to the successor, that it is rather for his benefit; for now he will have the rent reserved on the first lease during the residue of that term, and may also at the same time recover the rent reserved upon the second lease, being only for years, because the lessee is estopped to say he did not take such lease under such reservation: and so the successor will have two rents instead of one; though if the second lessee should enter, and be evicted by the first lessee, this would cause a suspension of the rent reserved on the second lease: however, the successor suffers no prejudice, because though he cannot distrain for the second rent during the continuance of the first lease, and though the re-entry of that first lessee should amount to an attornment, and give the rent thereon reserved to the second lessee, yet the bishop

[1 Bl. Rep.
626.]

bishop, or his successor, may always maintain an action of debt against the second lessee for the rent, and so will in all events be sure of one rent.

But this lease, though it be not either against the letter or meaning of the exception in 1 *Eliz. c. 19.* yet since it is not warranted by 32 *H. 8. c. 28.* it must be confirmed by the dean and chapter, as before the 1 *Eliz. c. 19.* all leases not pursuant to 32 *H. 8. c. 28.* must have been, to bind the successor: and such confirmation must be in the (a) life of the bishop who makes it. of such concurrent lease in the vacation of the bishoprick, is good enough. 4 *Leon. 78.* *Quere.*

10 Co. 60.
b.
Moor, 109.
Co. Lit. 45.
(a) But one
book says,
that con-
firmation

Co. Lit. 44.
b. Palm.
466., &c.
5 Co. 2.
Moor, 253.
Leon. 59.
Latch. 241.
2 Brownl.
162. Cro.
Eliz. 141.
And. 193.
Ley, 78.
Cro. Eliz.
111.

[(b) See
5 Geo. 3.
c. 27.]

But after such lease for years, the bishop cannot make a lease for three lives to be good by way of concurrent lease, though it be confirmed by the dean and chapter; but such second lease, whether it be made to begin presently, or by way of lease or grant in reversion, and attornment upon it, is against the exception in the 1 *Eliz. c. 19.* and, by consequence, shall not bind the successor: for the words of the exception are, *other than leases for three lives, or twenty-one years,* in the disjunctive; so that there ought to be only one, or only the other in being at a time against the successor, and not both together: for which reason also, after a lease for three lives, the bishop cannot make a lease for twenty-one years to bind the successor, though with the confirmation of the dean and chapter, because then there would be both a lease for three lives and twenty-one years in being at a time, which that statute does not allow of: and if the lease in reversion for three lives should be good as a concurrent lease, then would the successor have no remedy for the rent thereon reserved during the first lease; not by distress, because the possession was only a pledge for the rent reserved on the first lease; not by action of debt, because that does not lie for rent reserved on an estate of freehold during the continuance thereof (b); not by assise, because he had no seisin of it; and though *ex vi termini* the rent is payable, because after the lease for years determined the lessor may distrain for all arrears; yet that is only a possibility or contingency; for the lease for years may outlast the three lives, and then they, by reason of their reversionary interest, having the present rent of the lessee for years, if they all die before the determination of the lease for years, the bishop and his successors will lose all that rent, and so have nothing to maintain hospitality, or sustain the dignity of their sees, which this statute of 1 *Eliz. c. 19.* intended chiefly to provide for. And though the first lease were for three lives, and the second only for twenty-one years, yet that will not bind the successor; because though an action of debt might be maintained against the lessee for years for the rent reserved on his lease during the lease for lives, yet such lease for lives and years at the same time is against the words of the exception of 1 *Eliz. c. 19.* which are in the disjunctive. It may also happen that the lessee for years is worth nothing, and then if the three lives should outlive such subsequent lease for years, the successor of the bishop would lose all that rent, and so suffer in his revenues, against the design

and meaning of the act ; which proves, that the concurrent lease holds place only where *both are for years* ; so that the certain determination of the first, and commencement of the second are known immediately upon the making thereof, and that the successor will in all events be sure of a remedy by way of distress, for the one rent and the other, as they respectively commence ; and also by action of debt or covenant upon the contract in the mean time, if such concurrent lease should be construed to pass a reversionary interest, and entitle him to the rent reserved upon the first lease by an unwary or wilful attornment of the first lessee. And this concurrent lease for years has not escaped the censure of some learned men, though being adjudged at first in the *Exchequer Chamber*, by a majority of ten judges, it has been ever since allowed for law ; for my lord chief justice *Vaughan* says, that this concurrent lease is neither within the letter or meaning of the statute 1 *Eliz. c. 19.* the words of which are, *other than for twenty-one years, or three lives*, and in that case there is another lease *in esse* than for twenty-one years, or three lives ; for there are two leases *in esse*, and so more than the statute warrants ; and that the statute intended, when the first lease expired, the bishop who should then be, should have the advantage to make a new lease, which by allowing such concurrent lease may be prevented perpetually, except by way of remainder : and as for the intent of the statute, he said, though the party is estopped in pleading, yet the jury are not, but may find the truth of the case ; and if the party dies to whom such concurrent lease is made, neither his executors nor administrators are estopped ; for otherwise they would pay a rent for nothing, which would be in their own wrong, and against the right of the testator.

3 Keb. 378.
Degg. 111.

Comp. In-
cumb. 243.

It appears by the cases before-mentioned, how and in what manner bishops may make concurrent leases, not being restrained therefrom by the 1 *Eliz. c. 19.* In the same manner likewise might deans and chapters, masters and fellows of any college, and other persons mentioned in the 13 *Eliz. c. 10.* not being restrained therefrom by that statute ; but that being found a great mischief, was remedied and qualified by 18 *Eliz. c. 11.* which makes all leases by any of the said ecclesiastical, spiritual, or collegiate persons, or others of any of their ecclesiastical, spiritual, or collegiate lands, tenements, or hereditaments, whereof any former lease for years is in being, not to be expired, surrendered, or ended, within three years after the making of any such new lease, to be void and of none effect ; so that within these bounds they may likewise make concurrent leases for years.

2 Brownl.
134. 158.
164.
Moor, 875.
Co. Lit.
45. b.

The dean and chapter of *Norwich*, 8 *Eliz.* made a lease to *A.* for ninety-nine years, to begin after the end of a former lease then in being, which happened 35 *Eliz.* ; afterwards, in 42 *Eliz.* the dean and chapter made a lease to the plaintiff for three lives, rendering the antient rent quarterly, and covenanted to acquit and save harmless the plaintiff and the lands demised to him, during the lease, by reason of any lease made by them, or any of their predecessors ; and livery was made upon it ; but it did not appear whether

Whether it was the same dean that made the lease to *A.*, nor that *A.* had then entered: and now the plaintiff being evicted by the assignee of *A.*, brought his action of covenant against the dean and chapter; and had judgment by reason of the express covenant; and also, because it did not appear that the dean, who was party to the plaintiff's lease, was dead: for it was agreed, that the lease to the plaintiff would be void against the succeeding dean by the 18 *Eliz. c. 11.* because there were then above three years of the first to come: but *Coke* held, that though there were four or five, or more years of a former lease to come, yet if that former lease were surrendered within three years after the making of a second lease for years, such surrender would make good the second lease; but if the first lease were for years, and the second for lives, then, though there were but two years to come of the first lease, yet the second would be void, which perhaps may be for the reasons mentioned in the concurrent leases by bishops: but if so, then what my lord *Coke* says in the same case must be a mistake, that if the plaintiff (whose lease was for three lives) had procured *A.* within three years to have surrendered his lease to him, that this would have made good his own lease, which cannot be if what he said before be true; *ideo q.*

But for such houses, and so much land, as by 14 *Eliz. c. 11.* they may let for forty years, they cannot make leases in reversion or concurrent leases, because that statute expressly forbids leases in reversion thereof; and the 18 *Eliz. c. 11.* relates only to the 13 *Eliz. c. 10.* as appears by the following case.

In trespass upon special verdict it was found, that the dean and chapter of *Paul's* made a lease for forty years, of a House in *London*, to begin presently there being then ten years of a former lease to a stranger to come; and the court held this second lease merely void by 13 *Eliz. c. 10.* and not warranted by 14 *Eliz. c. 11.* which makes good leases of houses in market-towns for forty years, so they be not made in reversion; and this lease, though it be made to begin presently, yet there being another lease *in esse*, is a lease in reversion; for so much as remains of the former lease. And so it was resolved in *C. B.* 14 *Car. 2.* in the case of *Wynn* and *Wild*, of a lease of the dean and chapter of *Westminster*; and though this was properly a concurrent lease, yet being a lease in reversion, it is forbidden within the express words of the 14 *Eliz. c. 11.* and so void against the successor.

A vicar having made a lease for years of a house in a market-town, and of lands there appertaining, *anno* 1672, when there were but two years of the first lease to come, let it to another for twenty-one years from the next Michaelmas then next, reserving the ancient rent during the term, and the four most usual feasts, or within ten days after, and the lease was confirmed by the archbishop, (patron of the vicarage) the dean and chapter of *Canterbury*; if the succeeding dean and chapter, and by this lease, was the question? and adjudged by the court, that he was not. 1. It was adjudged, that the death of the lessor, within eighty days, did not void the lease within the statute of non-residence as was held in *Bayly v. Murin*.

Comp. In-
cumb. 344.

Cro. Elis.
564.
Hunt and
Singleton.

Vent. 246.
Carter, 9.

Vent. 24.
2 Lev. 61.
3 Keb. 46.
107. 193.
Bayly v.
Murin.

of

of non-residence. 2. That though the rent were reserved at the usual feasts, or within ten days after; (and therefore as it was urged, the term ending at *Michaelmas*, would be expired before the last day of payment; though for the other days it was agreed to be for the successor's advantage, because the predecessor might die within the ten days, and then the successor would have that whole quarter's rent;) yet the court resolved that the reservation was good in the whole, and that being reserved during the term, there should be no ten days given to the lessee for the last payment, according to *Barwick and Foster's case*, *Cro. Jac.* 227. 233. 3. It was adjudged that this was a lease in reversion, and so not warranted by 14 *Eliz. c. 11.* which, as to houses in market-towns, repeals the 13 *Eliz. c. 10.* but excepts leases in reversion; and this lease being to commence at *Michaelmas* next, was properly a lease in reversion, and differs from a grant of a reversion. And further, they all, but *Hale*, held, that if this lease, in this case, had been made to commence presently, yet it would have been void, there being another lease in being, so that for so many years as were to come of the former lease, it would be a lease in reversion; and they held, that the 18 *Eliz. c. 11.* which permits concurrent leases, so that there be not above three years of the former lease, &c. extends only to 13 *Eliz. c. 10.* and recites that, but not the 14 *Eliz. c. 11.* nor makes any alteration thereof: but *Hale* doubted of this, and inclined rather contrary, that if the lease had been made to commence presently, it had been good; because there were not then three years of the former lease to come, and he thought the 18 *Eliz. c. 11.* was a qualification as well of leases upon the 14 *Eliz. c. 11.* as upon 13 *Eliz. c. 10.* 1. Because the 14 *Eliz. c. 11.* is an appendix to 13 *Eliz. c. 10.* and only enlarges it as to houses in cities and market-towns; and therefore the 18 *Eliz. c. 11.* reciting the 13 *Eliz. c. 10.* does, by consequence, recite also the 14 *Eliz. c. 11.* 2. Because there is such a connection between all the statutes concerning ecclesiastical persons, that they have been generally taken in the construction of one another; and that though 32 *H. 8. c. 28.* is not recited either in the 1 *Eliz. c. 19.* or 13 *Eliz. c. 10.* yet a lease is not warranted by those statutes, unless it hath the qualifications required by 32 *H. 8. c. 28.* 3. From the great rummage it would make in leases, if they should be void, when there was ever so little of a former lease unexpired.

Poph. 8.

The president and scholars of *Magdalen College in Oxford* made a lease of a house, &c. for twenty years, and ten years before the expiration thereof made a lease to another for twenty years, to begin after the expiration of the first lease; though this be, in strict propriety, a lease in reversion, yet it was said to be good, and to stand well within 14 *Eliz. c. 11.*, because these contracts or leases do not intermix, but the one stands well with the other, and both together do not exceed the forty years comprised in the statute, which doth not hinder leases to be made from a day to come: but this opinion is (a) denied to be law, and seems also to be expressly against the foregoing cases, where such lease to begin

(a) 1 Vent.
246.
3 Keb. 107.

gin at a day to come, there being then another lease *in esse*, is condemned, though both did not exceed the term of forty years in the whole. Carter, 12. 15.

Rule 4. That such Leases are not to exceed three Lives, or twenty-one Years.

A fourth rule to be observed for making these leases good in law is, that they do not exceed three lives, or twenty-one years, from the making thereof; therefore, if a bishop makes a lease for four lives, and one of them dies in the life of the bishop, so that at his death there are but three lives in being, yet the lease is void against the successor, because being void by 1 *Eliz. c. 19.* at the time when it was made, no subsequent accident can make it good. 10 Co. 61. b. 62. a.

So, if a lease be made for three lives in this manner, *viz.* to one for life, remainder to a second for life, remainder to a third for life, this lease is void against the successor; because, otherwise the two first would be punishable of waste during their lives, by reason of the intermediate remainder; and so dilapidations, and other mischiefs, which the statutes intended to provide against, would be let in. Cro. Car. 95. Owen and ApRees, Hetley, 22. [This point was made and argued at the bar in the case referred to, but the court gave no opinion upon it.]

So, if an archdeacon makes a lease for three lives, according to the statutes, and the lessees make a lease for 100 years, which is confirmed by the archdeacon, bishop, dean, and chapter, yet such lease shall not bind the successor: or, if a bishop makes a lease for three lives, reserving the ancient rent, and they make a lease for 100 years, if three men so long live, which is confirmed by the bishop and chapter; yet may the successor avoid this lease, and yet these are out of the words of the statutes; but if they are not to be construed to be within the meaning thereof, the statutes would signify nothing, and all ecclesiastical persons, by such evasions, might get out of the acts, and make what alienations they pleased. Ley. 74. Bishop of Hereford's case. 5 Co. 15. a.

If a lease be made to *A.* for the lives of *B.*, *C.*, and *D.*, this is a good lease; for a lease to one for the lives of three others, and a lease to three for their lives, is all one, within the intent of these statutes; for three lives are the measure of the estate, which is all the statutes require. But a lease for ninety-nine years, determinable on three lives, seems not good within the statute of the 1 *Eliz. c. 19.* & 13 *Eliz. c. 10.* which make void all estates, gifts, grants, &c. (other than for three lives, or twenty-one years); so that a lease for ninety-nine years, determinable on three lives, being neither of those, falls within the disability and voidance of the first part of those acts. Cro. Jac. 76. Baugh v. Haina.

But a lease by husband seized of lands in right of his wife, or jointly with his wife, of an estate of inheritance for sixty years, if they should so long live, was held sufficient to bind the wife surviving, within the 32 *H. 8. c. 28.* and no question made of it; the only dispute there being, Whether the wife ought to have joined in the indenture of lease? and that such leases for ninety-

(a) 8 Co.
70. & vide
3 Keb. 595.

nine years, determinable on three lives, are good within that statute, appears from the reasoning in (a) *Whitlock's case*; where it is adjudged, that if a man has power to make leases absolutely or generally, (as the several persons comprised in the statute of 32 H. 8. c. 28. have,) and a proviso or restraint comes after, (as in that act it does,) that such leases shall not exceed the number of twenty-one years, or three lives at the most; there, a lease for ninety-nine years, determinable on two or three lives, is good within the first part of the act, and not made void by the last part thereof, because it does not exceed the three lives thereby allowed, though it be not directly for three lives; but now a lease for ninety-nine years, determinable on three lives, upon the statute of 1 Eliz. c. 19. & 13 Eliz. c. 10. is just the reverse of this; for the first part of these acts makes void all estates, gifts, grants, &c. by the persons therein-mentioned, and the last part saves only leases for twenty-one years, or three lives, &c. so that this lease being void by the first part of these acts, and not within the saving of the last part, being neither for twenty-one years, nor three lives, shall not bind the successor within these acts; *sed quare de hoc*.

Leon. 306.
5 Co. 6. b.
8 Co. 70. b.

But though these statutes provide that these leases shall not exceed twenty-one years, or three lives, yet such leases for fewer years, or lives, are good; for the intent of the statute was only to abridge the power of making long and unreasonable leases, by reducing them to such a determinate number of years or lives, which they should not exceed, but might be made as much under as the parties pleased.

Rule 5. Of what Things Leases may be made to bind the Successor.

Co. Lit.
44. b.
47. a.
142. a.
144. a.
7 Co. 51.
Leon. 333.
Bro. tit.
Leases, 17.
21. tit.
Grant, 44.
59.

A fifth rule to be observed in the making of leases upon these statutes to bind the successor is, that they must be made of lands or tenements corporeal and manurable, whereto resort may be had for the rent reserved thereout by way of distress; for otherwise the successor may be without any remedy for the rent, and so dilapidations, poverty, and all the other mischiefs the statutes intended to provide against, be let in. Therefore, leases of fairs, markets, liberties, franchises, advowsons, commons, piscaries, offices, hundreds, tithes, or any other incorporeal inheritance, though with confirmation of the dean and chapter, or other persons required by law to confirm the same, will not bind the successor.

For the better understanding of this rule, it will be necessary to take notice of some distinctions, which plainly arise out of the books.

5 Co. 3.
Jewel's
case. Cro.
Jac. 111.
173.
Moore, 778.
Palm. 175.
2 Sand. 303.
Hard, 326.

1. All the books agree that a lease for three lives of tithes, or other incorporeal inheritances before-mentioned, will not bind the successor, though the ancient rent be reserved, and the lease or grant confirmed; the reason whereof is, that if such lease or grant should be good against the successor, he would then be without the tithes, &c. and have no remedy for the rent thereon reserved;

served; for distrain he could not; because there would be no place wherein to take any distress, the things leased or granted being perfectly incorporeal and invisible; an assise he could not have, because either he had not seisin, or, if he had, yet there would be nothing to put in view of the recognitors; and an action of debt he could not maintain during the lease, because, being for three lives, that is, an estate of freehold, which will endure no action of debt so long as it continues; and so the successor would, in such case, have no manner of remedy for the rent reserved, which would be against the express provision and intent of the several acts.

2. It is held likewise in some books, that a lease for twenty-one years of such incorporeal inheritances, though they have been usually demised, and the ancient rent be the rent reserved, that yet this is voidable by the successor within these statutes; because though the rent reserved be good by way of contract between the lessor and lessee, and that debt may be maintained for recovery thereof; yet, they say, it is not such a rent as is incident to the reversion, nor shall pass with it to the successor; and therefore the successor having no remedy for the rent, shall not be bound by the lease.

But this point seems to have been shaken by contrary resolutions since *Jewel's* case, for some books expressly hold such lease for years to be good against the successor; because, they say, he has remedy for the rent by action of debt, and say it has been so adjudged, and take the diversity (a) between such lease for years and a lease for life: also, they say, that the rent issues out of the tithes in point of render, though not in point of remedy, because no distress can be taken for it; but that is supplied by the action of debt which lies for such rent, and shall devolve on the successor; and that such rent does not lie only in privity of contract, as a sum in gross, but is incident to the reversion, otherwise the successor could not have it, being only privy to the estate, not to the personal contracts of his predecessor; and to this opinion the court inclined, but thought it a point of great consequence, and therefore, to avoid it, gave judgment on another point which was clear.

hereditaments by ecclesiastical persons, whether for lives or for years, as good as if the leases were of corporeal hereditaments, and gives action of debt to the successor for rent reserved on freehold leases.]

3. All the books agree that a lease for three lives, or twenty-one years, of a manor, with the advowson appendant, or of lands or houses, and of tithes usually let therewith, reserving the ancient rent, &c. is good, and shall bind the successor within these statutes; for though the rent does not issue out of the advowson, tithes, &c., in point of remedy, yet the rent is greater in respect thereof, and the successor has his remedy for the whole rent upon the lands, or other corporeal inheritances let therewith; (*sed quare*, if the tithes should be worth 2 or 300 *l. per ann.* and the lands not above 4 or 5 *l. &c.*;) and *Vaughan* proves this from the express words of 13 *Eliz. c. 10.* which are, That all leases by any spiritual or eccle-

5 Co. 3.
Co. Lit. 44.
b. 47. a.

Cro. Jac.
112.
Moor, 778.
Ley, 76.
Palm. 105.
Hard. 326.
Raym. 18.
Lev. 108.
2 Sand. 304.
Keb. 63.
2 Keb. 727.
[(a) This
diversity is
no longer of
any import-
ance; for the
5 Geo. 3.
c. 17.
makes leases
of tithes
and other
incorporeal

Cro. Jac.
453.
Moor, 201.
5 Co. 4.
2 Roll.
Abr. 451.
Vaugh. 203,
204.
2 Sand. 303.
Leon. 333.

fiastical persons, having any lands, tenements, tithes, or hereditaments, (other than for twenty-one years, or three lives, &c.) shall be void; so that the statute plainly shews, that some way or other tithes may be leased for twenty-one years, or three lives; and if they cannot be leased singly, it must be with lands usually letten therewith.

Lev. 333.
Corbet and
Clear, cited.

Therefore, where the dean and chapter of *Norwich* leased a parsonage and common of pasture, rendering rent, and 1 E. 6. surrendered their possessions to the king, and afterwards the king granted the parsonage, without speaking of the common of pasture; it was held, that the patentee of the parsonage should have all the rent, and no apportionment should be in respect of the common; because all the rent issued out of the parsonage, and nothing out of the common.

Cro. Eliz.
690.
Armiger v.
Bishop of
Norwich
and Holland.

A bishop, having an advowson appendant to a manor in right of his bishoprick, grants the advowson for twenty-one years, and this was confirmed by the dean and chapter, yet held within the restraint of 1 Eliz. c. 19. and void against the successor; because, as was said, it was not such an hereditament whereout a rent could be reserved: but a better reason seems to be, because no rent was at all reserved, and then, to be sure, neither the predecessor nor successor could have any benefit thereof by way of contract, or otherwise; nor did it appear to have been usually letten.

Palm. 174.
Bishop of
Oxford's
case. Co.
Lit. 47. a.
142. a.
186. b.

The bishop of *Oxford*, having *primam vesturam sive tonsuram* of certain lands, after 1 Eliz. c. 19. lets to the plaintiff for three lives, rendering the ancient rent, and dies, and his successor, the now defendant, enters upon him, and takes the hay: it was urged, that this was not like the lease of a fair, because this concerned land, and was to be taken upon the land, and so the successor was not without remedy, because he might distrain the grafs when it was cut: but *per curiam*, if the bishop had had *vesturam*, or *primam vesturam*, or *tonsuram*, from such a day to such a day, this had been such an hereditament as might have been leased; for there the bishop or his lessee might have mowed, and after fed it, during that time, and then the successor might have distrained the cattle; but here the bishop had only *primam vesturam*, viz. only the cutting of the grafs once within such a time, and then his interest is at an end, and he cannot after feed it; so that it is no hereditament within the statute, whereof any lease can be made to bind the successor.

5 Co. 15. a.
10 Co. 60. b.
Cro Eliz.
207. 4:0.
And. 241.
Mod. 204.
2 Mod. 56.

If a bishop, dean, and chapter, or any other person restrained by these statutes, grant the next avoidance of any church which they have in right of their bishoprick, deanry, &c., though with confirmation of all persons interested therein, yet the successor shall avoid it; for this is such an hereditament as the statutes intended to restrain them from binding their successors by, and no rent can be reserved out of it; for such grant of the next avoidance can bring no manner of benefit to the successor.

4 Co. 24.
Ley, 80.
Comp. 12.

It hath been several times held, that bishops, or other ecclesiastical persons, are not restrained either by the 1 Eliz. c. 19. or 13 Eliz.

13 *Eliz. c. 10.* from making grants of copyhold lands in fee, in tail, or for lives, or for any number of years, according to the custom of the manor, and that no confirmation is necessary to make such grants good, though they are made by a sole corporation, as by a bishop, prebendary, &c.

cumb. 253.
& vide
 3 Co. 7.
 Moor, pl.
 276.
 Sav. 66.

Leon. 4. 4 Leon. 117. Heydon's case.

The bishop of *Winchester*, 5 *Eliz.* with confirmation of the dean and chapter, granted an annuity or annual rent out of lands, parcel of the possessions of his bishoprick, with clause of distress to it, *pro consilio impenso & impendendo pro termino vite sue*, and died; the grantee brought debt against the executors of the bishop for arrears incurred in his lifetime; and the only question was, whether upon the 1 *Eliz. c. 19.* this grant was void against the successor, so that the grantee could not maintain a writ of annuity against him, but only an action of debt against the executors of the grantor? the case does not appear to be adjudged, but it is cited in several books, that the annuity was determined by the death of the grantor; for though this was not parcel of the possessions of the bishoprick, but only issuing out of them, yet if the successor should be charged with it, this would tend to his prejudice and impoverishment, which the statutes intended to prevent.

Dyer, 370. h.
 10 Co. 61.
 5 Co. 15.
 Hob. 97.
 Roll. Rep.
 164. 171.
 Cro. Car. 49.
 11 Co. 69.

So, where a writ of annuity was brought against the successor upon a grant made by his predecessor, and confirmation by the dean and chapter, yet it was adjudged that it would not lie, because it was not averred that it had been usually granted, though it was averred to be reasonable; and it appears by these cases, that if to avoid this act a writ of annuity were brought against a parson or vicar, who prayed in aid of the patron and ordinary, and upon default, judgment were given for plaintiff, this likewise is within the equity of the said act, and void against the successor: so, if a writ of annuity were brought against a bishop upon title of prescription, or otherwise, and judgment given against him by verdict or confession, yet this is restrained by 1 *Eliz. c. 19.* because the bishop is charged with the annuity in respect of the bishoprick; and therefore the successor would be charged with the arrears incurred in the life of the predecessor, as it is held 48 *E. 3. c. 26.* and so it would tend to the diminution of the revenues, and impoverishing of the church.

10 Co. 61.
 Bishop of
 Chester's
 case, cited
 30 *Eliz.*
 Rot. 346.
 Ley, 72.
 Bridg. 30.
 S. C. cited.

So, if a rent-charge be granted by any corporation restrained by these statutes, though this rent-charge be not parcel of their possessions, yet it is against the equity of the statutes, and void against the successor; for if bishops, and other ecclesiastical persons, were at liberty to grant what rent-charges they thought fit, and that these should be good and binding upon the successor, he might have his possessions so clogged and incumbered, as not to be able to keep up hospitality, or sustain the dignity of his function, and so the good design of these acts be wholly eluded.

5 Co. 15. a.
 Roll. Rep.
 171.

In covenant, plaintiff declared of a lease by the predecessor of the defendant, in which was a covenant, that he and his successors would pay all taxes during the term, and assigus for breach, that

Vent. 223.
 2 Lev. 68.
 3 Keb. 69.
 Davenant
 v. Bishop of
 Salisbury.

such

such a tax was made by Parliament for the royal aid, and that the plaintiff was forced to pay it, the defendant refusing to discharge it, *unde actio accrevit*, &c. and the only question was, whether this were such a covenant as should bind the successor as incident to the lease by 32 H. 8. c. 28. ? for it is clear, if the bishop had made a covenant or warranty, this had not bound the successor at the common law, without the consent of the dean and chapter ; and if it should now be taken that every covenant would bind the successor, the statute of 1 Eliz. c. 19. would be of no effect : but it was held, this covenant would not bind the successor ; 1. Because it is not averred that such covenants had been used in former leases, as it ought to have been, to prove it an ancient covenant. 2. If this covenant had been in former leases, yet it could not bind to pay this new tax by Parliament ; but it must have been intended only of such as were then in use, *viz.* synodals, pensions, tenths granted by the clergy, procurations, &c. it was held however, that this covenant would not avoid the lease.

Rule 6. What shall be said a usual Letting to Farm upon the several Statutes, and by what Persons.

Co. Lit.
44. a.
Dyer, 271.
Pegg. 106.

A sixth rule to be observed in the construction of leases upon these statutes arises upon the words of 32 H. 8. c. 28. that *that act shall not extend to any lease of any manors, lands, tenements, or hereditaments, which have not most commonly been letten to farm, or occupied by the farmers for the space of twenty years next before such lease thereof made.* The first construction that prevailed was, that this letting to farm within the twenty years ought to be by some person who had an estate of inheritance therein ; and therefore, if the heir in tail were in ward of the king for twenty years, and during that term the king, or his grantee, made leases of lands of the ward which had not been usually letten or occupied in farm for twenty years before, this letting them to farm by the king, or his grantee, during the twenty years wardship, is not such a letting to farm within the intent of the statute, as will enable the heir in tail, when he comes of age, to make a lease for twenty-one years, or three lives, of those lands, to bind his issue. So, if such lease were made by tenant by the curtesy, tenant in dower, or the like, of lands which before that time had not been most usually letten to farm for twenty years, their letting to farm of such lands for the greater part of twenty years, will not impower the issue in tail, when he comes into possession, to make a binding lease of such lands within the intent of the statute ; for the intent of the statute was only to make good leases of such parts of the land as had been before usually letten by those who were owners of the inheritance, and best knew what was most proper to be let out, and what not, and therefore did not intend to establish leases made of any other possessions than those, which the owners of an estate of inheritance therein had, for the greater part of twenty years, thought fit

to lease to farm ; for if the leases of tenant in dower, tenant by the curtesy, guardian by knight's service, or such like, who, having only a particular estate therein, would be for making money of it all, and letting out the whole for rent ; if leases made by such for eleven or twelve years, or more, according to the time they lived or had interest therein, should be a letting to farm within this statute ; then might the issue in tail, when he came into possession, make a lease for twenty-one years, or three lives, of the capital messuage or mansion-house, or, perhaps, of the whole estate, because those particular tenants had so done for eleven or twelve years, or more ; and then if such tenant in tail should die the next day, his issue would not have a house to put his head in ; which never was the intent of the statute.

So, where the temporalities of a bishoprick come into the hands of the king, and he keeps them twenty years, or more, and during that time lets to farm for eleven years, or more, lands which had not been before accustomedly letten, and then appoints a successor, and restores him the temporalities, he cannot by any lease bind his successor, for those lands, which had no other warrant for his leasing thereof, than only that the king, whilst the temporalities were in his hands, had let them to farm for eleven years or more ; and he might have let the bishop's palace, or the demesnes about it ; and then if the successor might likewise make a binding lease thereof for twenty-one years, or three lives, and should die, or be removed soon, the mischief intended to be remedied by the statute, in giving the farmers a secure and lasting possession during their leases, would introduce a much greater upon the successor, by shutting him out of all the houses and lands belonging to the bishoprick for twenty-one years, or three lives ; and so, instead of maintaining hospitality, as the books speak, would occasion nothing but quarrels and contentions. So, for the same reason, a letting to farm by a disseisor or any other who has not a rightful estate of inheritance, though it be for the greater part of twenty years, is not a letting to farm by such a person as will enable the tenant in tail, bishop, or other person intended to be provided for by this statute, to make any binding lease of lands which were not accustomedly letten to farm for the greater part of twenty years, by those who had a rightful estate of inheritance therein.

Palm. 175.
6. Bishop
Oxford's
case.

But as the mischief would be great, on the one hand, to construe the statute in such a manner, as would empower the persons before-mentioned to determine of what parts and possessions leases might be made good and binding against the successors, issues in tail, and other persons intended to be bound by the act ; so, on the other hand, a construction not less hurtful to them seems to have obtained upon the same words of the statute ; which provides, *That it shall not extend to any lease of any manors, lands, tenements, or hereditaments which have not most commonly been letten to farm, or occupied by the farmers for the space of twenty years next before such lease thereof made ;* upon which words it is held, that the lands to be leased within that statute must be such, and such only, as have been letten to farm, or occupied for eleven years, or more,

Co. Lit.
44. b.
Cro. Eliz.
708. Mal.
at let and

Mallet.
Sir John
Mervyn's
case.

at one or several times within the twenty years next before the lease for twenty-one, or three lives, to be made; so that if lands have been formerly let to farm never so long, or often, yet if the tenant in tail, or bishop, should keep them in his own hands fifteen or twenty years, these lands cannot be leased for twenty-one years, or three lives, to bind the issue or successor, till they have undergone a probation of twenty years longer, and within that time have been letten to farm, or occupied by farmers for eleven years, or more: so, if the temporalities come to the hands of the king, and he should keep the lands usually letten in his own hands forty or fifty years, more or less, and then restore the temporalities to the successor, he must then begin to let them to farm, till they have run out in farmers hands eleven years at least, otherwise he can make no lease for twenty-one years, or three lives, within this statute. So, if a disseisor after a lease for twenty-one years, or three lives, expired, enter upon the bishop, or tenant in tail, and hold the lands twenty years, or more, and then the bishop, or tenant in tail, or their issue or successor, enter, though these lands were demisable, and actually demised, within the statute, but just before the disseisor entered, yet now they cannot be again leased for twenty-one years, or three lives, till they have been in farmers hands for eleven years at least; and so it is in the power of the king, the disseisor, nay of the bishop, or tenant in tail himself, to evade and elude the intent of the act, by keeping the lands ten or twelve years in their hands; and though they die, or are removed presently, yet the successor or issue can have no benefit of the statute till after eleven years at least.

(a) Where
the case was,
that the
Archbishop
of York in
1604, made

a lease for three lives, rendering the ancient rent; in 1630, this lease was surrendered, and the lands remained unlet till 1662, when the archbishop made a lease thereof to the plaintiff's lessor, rendering the same rent as was reserved in 1604, and died, and the then archbishop entered, and let to the defendant; and whether these lands, not having been let since 1630, could be leased again, was the question? and Twisden and Keeling, for the reasons herein mentioned, held they might. Lev. 212. Sid. 316, 416. Raym. 165. 2 Keb. 213; Pemble v. Stern.

These reasonings and instances were pressed and urged in a (a) case by *Twisden* and Chief Justice *Keeling*, against *Windham* and *Moreton*, and they thought them so considerable, that it put them upon finding out a more easy and natural construction.

For they held, that the clause consisted of two parts in the disjunctive, and if either of them were observed, it was sufficient to warrant the leasing for three lives, or twenty-one years, within the intent of the statute: the words are, that *that act shall not extend to any lease of any manors, lands, &c. which have not most commonly been letten to farm*; this is the first part of the disjunctive, and is general: the other part is, *or occupied by the farmers thereof by the space of twenty years, &c.* and they thought the most natural and genuine meaning of the words to be, that the lands to be leased must either be such as have been most commonly letten, that is, such as are not reputed part of the demesnes of the bishoprick, or such as have been occupied by the farmers thereof by the space of twenty years, &c., that is, if the bishop has let out part of his demesnes to farm, and the occupation of the farmer has been

been approved for twenty years together, as not any ways inconvenient to the bishop, the statute will presume that they are lands fit to be let. And as to the authorities against this opinion, *Twissden* said, in *Mallet's* case, that point came in unnecessarily; and *Keeling*, that it came in on a foolish argument, and therefore was of no great weight; and so in Sir *John Mervin's* case, the point never came in question, but only *dictum fuit pro lege*; and as to my lord *Coke*, (though he were a grave and learned man,) yet he was not infallible, nor did he desire to be accounted so, and this opinion of his was not judicial, that if it had come to an argument he might possibly have thought otherwise; for *Keeling* said himself was of that opinion, till he came to consider the case, and weigh the inconveniencies of that construction: and it was said, that queen *Elizabeth* kept the temporalities of the bishop of *Ely* above twenty years in her hands, and yet no question of his leases after: and they said likewise, that the lord *Coke's* inference was false, and not warranted by the statute, *viz.* that if it had been leased for eleven years it would be sufficient; for the first part of the statute, as to leasing, seems to refer to a more ancient time: also it was held, that if the other construction prevailed, these lands, or any other which continued unlet for eleven years, could never after be let again for twenty-one years, or three lives, because they were not most accustomedly letten, &c., by the space of twenty years, which makes it the more reasonable to reject such construction: *sed quere*, if by letting them again to farm for eleven years, or more, the power given by the statute to lease for twenty-one years, or three lives, be not set up again? but *quere*, whether since as it appears before, the letting to farm by the king, or a disseisor, &c., is not sufficient within this statute, whether likewise their keeping it in their hands for eleven years, or more, be of any prejudice to the bishop, or his successors, or to the tenant in tail, or his issue? for if the statute only intended letting to farm by the bishop or tenant in tail himself, then all the objections before-mentioned seem to lose their force, unless where the bishop, or tenant in tail, keep the lands undemised in their own hands for eleven years or more.

A lease made by the predecessor of the plaintiff for three lives, rendering rent, and confirmed by the dean and chapter; the defendant claiming under it avers that it was the usual and ancient rent, and the land usually demised; the plaintiff replies, that it was usually before that lease retained in the hands of his predecessors for hospitality, and traverses *absque hoc, quod fuit magis usualiter dimissa*, &c.: it was held a good traverse; for since 32 H. 8. c. 28. appoints that the ancient rent shall be reserved, it is thereby implied that the land should have been usually demised, otherwise the ancient rent cannot be reserved.

Cro. Eliz.
874. Bishop
of Hereford
and Scorey.

Another thing required by the statute is, that these leases be made of lands usually letten to farm, &c., upon which words it hath been adjudged, that a demise by copy of court-roll is sufficient; for that is in judgment of law but an estate at will; and without

Co. Lit.
44. b.
6 Co. 37. b.
Cro. Jac. 76.
2 Jon. 29.
Moor, 759.

Raym. 167. without question, lands demised at will by those who have the inheritance, rendering rent, are lands accustomedly letten to farm within the said act; and so it was ruled 7 *Eliz.* in Sir John Mervin's case, where tenant in tail let a copyhold by indenture, rendering the same rent as before, and held a good lease within 32 *H.* 8. c. 28. and *Williams* said, he had known it thrice so adjudged in his time, in the case of tenant in tail.

Moor, 199. But where tenant in tail had power, by a particular act of parliament, to make leases for life, lives, years, or at will, after the custom of the manor, yielding the true and ancient rent, &c., and he made a lease both of freehold and copyhold by a deed at common law, reserving such a rent; this was held not to be warranted by the statute as to the copyhold, because the statute speaks of leases at will by the custom of the manor; which imports, that the statute did not intend that copyholds should be demised otherwise than they were before the statute, and that was by copy of court-roll, not by a lease for years, and the rent to be reserved thereon was customary rent, not rent upon a lease for years at common law.

Rule 7. What Rent is to be reserved; And herein,

1. That there must be a Rent reserved.

Moor, 593. As to this the statute is express that a rent must be reserved; and therefore where the college of all *All Souls* in *Oxford* made a lease without reservation of any rent, though it was but to try a title, yet it was held void, the statute being express and positive; and therefore no construction or pretence can be urged to avoid the statute: but in that case it did not appear that no rent was reserved, but only the plaintiff had not shewn that there was any reserved, and yet there might be, in the lease; and if not, the defendant ought to shew it; and so the exception disallowed.

2. That this Rent must continue due, and be payable to the Lessors and their Successors.

5 Co. 6. a. This also is so strictly required by the statute, that it hath been held, that if a bishop, tenant in tail, &c., make a lease of land, the ancient rent whereof was 10*l.* and reserve but 5*l.* *per annum* during his life, and 10*l.* *per annum* after his death, to the issue or successor, yet this lease shall not bind, because the rent originally reserved was not pursuant to the statutes; though there can be no pretence of prejudice to the issue or successor, more than if the bishop, or tenant in tail, &c., should release the rent, or any part of it, during their own lives, which surely they may do: *ideo quare?*

3. That such Rent must be the same, or more in Quantity than hath been reserved within twenty Years next before such Lease made: And herein,

1. What

1. What shall be said to be the ancient Rent, where Variety of Rents have been reserved, or something formerly reserved now omitted or varied.

As to this, where variety of rents have been reserved, as formerly 10*l.* then 20*l.* then 30*l.* and lastly 40*l.* *per ann.* or *à contra* formerly 40*l.* then 30*l.* then 20*l.* and lastly 10*l.* *per ann.*; the 10*l.* in the one case, and the 40*l.* *per ann.* in the other case, are the rents to be reserved on any new lease to be made; but with this diversity between leases made by virtue of the several statutes before-mentioned, and leases by virtue of powers in private conveyances and settlements; for upon leases made by virtue of the several statutes before-mentioned, this was the measure immediately after these acts passed, and must continue so still; because the same acts being to warrant every successive lease as well as the first, there can be no variation of the rent in any other lease to be made from the rent, which, upon construction of those statutes, was in the first lease, made by virtue thereof, settled to be the antient and unaccustomed rent; and consequently, the variety of rents in such leases must have been only before the statutes: but upon leases made by virtue of powers in private conveyances and settlements at this day, reserving the old and accustomed yearly rent, or the most ancient and accustomable yearly rent, there; the rent reserved on any lease then in being, or upon the lease made last before such settlement or conveyance, seems to be the measure of the reservation upon any lease after to be made by virtue thereof; for the intent of such power, as well in such settlements as upon the several acts before-mentioned, was only that they, who were to make leases by virtue thereof, should not put the estate in any worse condition than it was at the time of such settlement, or of those acts made, but keep it in the same plight and condition as it then respectively was; and the rent reserved last before the making of such settlement, or of those acts, may well be called old or ancient in respect of the new rent to be reserved on such lease, to be made after such settlement, or after those acts. But the Lord *Cowper*, in the case of Lord (a) *Mohun and Orby*, seemed to make a doubt of this construction of the words *ancient and accustomable rent*, and thought the last rent no certain rule to go by; for suppose it were leased once at a greater, and twice at a less rent, he thought the ancient rule must be that reserved on the first lease; for the two last may be made by a tenant in fee, who was not bound to reserve the ancient rent, but might let it for nothing, if he pleased: but upon the 32 *H. 8. c. 28.* or the same words in private powers, *viz.* so much yearly rent, or more, as hath been most accustomably yielded or paid within twenty-years next before such lease thereof made, if a greater rent had been reserved before the twenty years, yet the reserved within the twenty years, though it were less, must be the measure of the reservation upon leases to be made by virtue of that statute, or of private powers, worded in the same manner.

Hard. 325.
326.
Morice v.
Antrobus,
per Hale.

(a) 2 Ventr.
531. 542.
Preced.
Chan. 257.
S. C. Gibb.
Eq. Rep.
45. S. C.

But

[Where the leases, on which the rent has been reserved within the twenty years, have been sometimes with fines, and sometimes without, Lord Cow-

per's rule seems the best: in any other circumstances Lord Holt's rule appears to be the more proper one. See Pow. on Powers, 549.]

6 Co. 37.
Cro. Jac.
76. Co.
Lit. 44. b.
Moor, 759.
Dean and
Chapter of
Worcester's
case.
[Com. Rep.
312.
Coventry v.
Coventry.]

But if within the twenty years it had been let once at a greater and twice at a less rent, then the question will remain, which of the reservations will be the measure of the rent to be reserved on any two new leases to be made? and how far the opinion of my Lord Chancellor *Cowper* will outweigh the opinions of my Lord Chief Justices *Hale* and *Holt* is considerable, though their opinions seem to fix a standing rule to go by, whereas his leaves it at great uncertainty, from which no rule can be formed; for it may have been let twice formerly at a less rent, and once, on the last lease, at a greater; and if the first reservation in this case, being greater, should be the rule, why should not the two first, in this case, though they are less; for his reason seems to turn upon the priority and antiquity of the rent.

In some cases, leases, by virtue of these statutes, will be good, though there be an omission of things formerly reserved, or a variation in the rent reserved in point of time: therefore, where the dean and chapter of *Worcester* were seised of the manor of *H.* in fee, in right of their church, of which manor one *G.* was copyholder for life, under the ancient rent of 8 s. and 8 d. payable at the four quarter-days of the year, and heriotable at the death of the tenant, and the copyholds of that manor were grantable by custom for three lives; the dean and chapter 24 *Eliz.* by indenture under their common seal, demise the said lands to *G.* and his assigns for the lives of *A.*, *B.*, and *C.*, and the survivor of them, rendering 8 s. and 8 d. half-yearly, and without reservation of any heriot; and after this lease made the dean dies, and his successor and the chapter enter to avoid this lease upon 13 *Eliz. c. 10.* (among other reasons); 1. Because the ancient rent was not reserved by reason of the loss of the heriot. 2. Because the rent was not payable, as it used to be; for before, it was payable quarterly, and now, it is reserved payable half-yearly, which is not so beneficial to the successor: but it was adjudged, that, notwithstanding these objections, the lease was good, and should bind the successor; for the 13 *Eliz. c. 10.* does not avoid any lease, if the accustomed rent or more, be reserved; and here the accustomed rent is reserved, and the omission, or loss of the heriot, is not material, because that was not a thing annual or depending upon the rent, but perfectly casual and accidental. 2. That though the rent was formerly reserved quarterly, and now half-yearly, yet the lease is good, and so would have been if it had been reserved only yearly; for the words of the act are, *whereupon the accustomed yearly rent, or more, shall be reserved*; so that if the rent be reserved yearly, the words of this act are satisfied, and this word *yearly*, not being in *Mountjoy's* case, makes the difference. And yet this rent had not all the beneficial qualities the other rent had; for whilst it continued copyhold, the lord might have entered for a forfeiture upon the denial or non-payment of the rent, which now, upon this lease thereof, at common law, he cannot do.

5 Co. 4. b.
5. b.

If

If the rent was anciently payable in gold, and it is now reserved payable in silver, this lease shall not bind the successor; for the variation may be prejudicial to the heir or successor, by the fall of silver; and though the same may be said were it reserved in gold, as it used to be, yet by continuing the species of reservation formerly made, the lessor hath used all the precaution the statute required, and the accidental fall after can be no ways imputed to him.

But if a quarter of corn was anciently reserved, and now a lease is made, reserving eight bushels of corn, this is good; for the reservation is the same both in quality, value, and nature, and differs only in words.

A precentor or chanter of St. Paul's, being seised of the parsonage of S., in *jure cantuarie*, leased a portion of tithes for two years, rendering 8*l. per ann.* and reserving pasturage for a colt in the land of the lessee; and the lease being expired, his successor made a lease for twenty-one years of the said portion of tithes, rendering 8*l. per ann.* but omitted the running of the colt; yet the lease was held good, because it was a thing reserved out of the lands of the first lessee only, which the successor could not reserve, such first lessee not being his tenant of the tithes: otherwise perhaps, if the reservation had been general.

Palm. 106.]
Eusden and
Dennis.

2. In what Manner such Reservation is to be made.

All that seems necessary here to be observed is, that there must be a particular mention or specification of the sum intended to be reserved, as well upon leases to be made by virtue of these statutes, as upon leases by virtue of powers in private conveyances and settlements; for otherwise the heir, or successor, would be put to infinite trouble, vexation and expence, if the reservation might be allowed to be made in the same or as general terms, as the power itself was; and the necessity of averring and proving what was the ancient and accustomed rent were to lie upon them.

Therefore, where a bishop was seised, in right of his bishoprick, of three manors which had been usually let together at the rent of 32*l. per ann.* and made a lease of the said three manors, except such and such parts thereof, rendering the ancient, usual, accustomed yearly rent, and the rents and services at the days and times usually accustomed, without specifying any rent or sum in particular; it was adjudged, that this lease should not bind the successor, because the usual and accustomed rent was 32*l. per ann.* where all the said three manors had been let without any exception; whereas now part being excepted, that which was the usual and accustomed rent for the whole, cannot be said the usual and accustomed rent for part; and then the reference being general to the ancient and accustomed rent, nothing at all is reserved, and, by consequence, the successor is not bound by such lease. This appears to be the reason in the book for the avoidance of that lease, and being sufficient for the purpose, there needed no other: but it will appear by the following case, that if the whole three manors had been let without any exception,

Cro. Car. 95.
Owen v.
Thomas.
3 Keb. 386.

ception, yet the reservation in such general terms would have been sufficient to have avoided the lease.

Trin. 1706.
in Chanc.
Lord Mohun
and Orby.
Eq. Abr.
343. pl. 5.
2 Vern.
531. 542.
Gilb. Eq.
Rep. 45.
Preced.
Chan. 257.
3 Chan. Rep.
702.
10 Mod. 473.

Fitton Gerard was tenant for life, with power to make leases for twenty-one years, or three lives, so as upon every lease of such lands as have been usually letten, and fines taken for them, the old accustomed rent, or more, be yearly reserved; and so as upon every lease of other lands not usually letten, or fines taken for them, there be reserved the best improved rent that can be gotten for the same, and the lessees to execute counterparts thereof.

Fitton by indenture 21 Decemb. 1702, demises to the defendants all such lands as have been usually letten, and fines taken for them, for ninety-nine years, if three persons should so long live, with a reservation in these words, *yielding and paying therefore the respective old and accustomed yearly rents*; and if this reservation was pursuant to the power, was the question? And my Lord Chancellor *Cowper*, being assisted with the two Chief Justices *Holt* and *Trevor*, decreed, that this lease was not good to bind the remainder-man; but my Lord Chief Justice *Holt* differed in opinion, and held this lease good. 1. Because the reservation being in the very words of the power, if the power was good, the reservation must be so too; for the same words must have the same meaning in both; and if a sum certain had been reserved, yet it must have been averred to have been the ancient and accustomed rent, or more; and therefore this reservation, in the words of the power, may be helped by such an averment, and consequently is good.

2. That if any of the lands comprised in this lease had not been anciently let, though the reservation in such manner as to them would be void, yet the lease would remain good as to the others.

3. Though all the lands were comprised in this one deed of lease, yet the remainder-man, who is to have all the deeds in his custody, might easily distinguish them, as well as if they had been let by several leases, as they were formerly. But my Lord Chancellor and *Trevor* held this lease void against the remainder-man, and not pursuant to the power. 1. Because it was never intended that the words of the power should be turned *verbatim* into a reservation in leases; and to say, that if the words in the power are good, they cannot be bad in the reservation, is a strange position.

Suppose in the power to make leases it were provided, that in every such lease there should be inserted such covenants as are usual in leases in that county, and a lease were made in the very words of the power, would this be good? Certainly not; nor could it be aided by any special verdict, finding the covenants usual in that county. 2. The question in this case is not between the lessor and lessee (between whom perhaps the lease may be good, and the rent recoverable); but the question is, as to the remainder-man, whose remainder and inheritance is to be charged by a power which is to be taken strictly, and is not pursued; for the intent thereof was, that a certain rent might be reserved upon every lease to be made, so that he in remainder may know how to come at it, and form his action for the recovery thereof, which, as this reservation is, he cannot do, but will be involved in perpetual

[1 Burr.
321.]

petual controversy and uncertainty; for he must not only aver and avow that the sum he distrains for is the ancient rent, but must also prove it; for if the tenant can shew another more ancient rent, then he may nonsuit the remainder-man; and so *toties quoties* he distrains or avows for any rent, the tenant by shewing that another rent has been reserved, may baffle him and keep the land in spite of his teeth, without any rent at all, till he is so lucky as to hit upon the true sum reserved upon every several lease, which will be very difficult for him to do, and is no ways agreeable to the power. But if a certain sum had been reserved, and the counterpart shewn under the tenant's hand, he must either shew a more ancient rent, or it will be presumed for the plaintiff: and if he should shew one more ancient, the consequence of that will be the avoiding of his own lease, which, to imagine he should attempt, is absurd; and without defeating the lease he can never avoid payment of the rent when it is reserved in certainty; but as it is reserved here, it is wholly uncertain. And my Lord Chancellor said, it was the first attempt that ever was made to delegate a power generally that was to have been executed particularly, and was a new invention tending to introduce perjury, forgery, and frauds, and therefore was not to be countenanced.

So, in the same case, where tenant for life had made a lease of the lands not usually letten, reserving therefore the best and most improved rents for the same, according to the words of the power; this was held so utterly uncertain, that nothing was offered to support it.

Lord Mohun
v. Orby.

But a case was therein cited, where Mr. Venables of *Cheshire* had power, by a settlement, to make leases of lands anciently demised, reserving, at least, 12 *d.* for every *Cheshire* acre; and he made a lease of all the lands anciently demised, *reserving all the rent intended to be reserved*; and though these words were very general and uncertain in themselves, the reservation was held good, because it might easily be ascertained by the reference of 12 *d.* at least, for every *Cheshire* acre, because it is known what a *Cheshire* acre is; and that may by admeasurement be at all times ascertained, and depends not upon uncertain evidence.

Lewson v.
Piggot.
3 Ch. Rep.
61. 76.

[So, where a power was given to lease, provided that two parts in three of the improved value be reserved as a rent, and the reservation was made in the very terms of the power; it was holden that the lease was nevertheless good; and that unless proof were made of a greater value than had been constantly paid and accepted of by the remainder-man, such sum must be taken as two parts in three of the full value of the premises at the time of making the lease, which, or the greater value, if so proved, was to be continued to be paid, whether the premises rose or fell in value.]

Audley v.
Audley,
2 Ch. Rep.
82.

A precentor of *St. Paul's* made a lease of lands, the ancient rent whereof was 40 *l.* and a couple of capons, and he now reserves only the 40 *l.* and takes a covenant from the lessee to pay yearly, over and above the 40 *l.* a couple of capons, or 6 *s.* and 8 *d.*, yet this was held such a covenant as amounted to a reservation,

Hard. 325.
Morrice and
Antrobus.

tion, and therefore the lease good against the successor. But as the lease in this case was made to baron and feme, and the baron only covenanted in that manner, which would not bind his wife if she survived; for that reason it was holden the successors would not be bound.

3. Where the Addition of more Land, with or without the Addition of more Rent, shall avoid such Leases.

Ley, 74. 77.
Cro. Eliz.
340, 341.
Tanfield v.
Rogers.

Tenant in tail, or any spiritual person, in right of the church, seised of a manor whereof the copyholds and services have not usually been let, but only the freehold demesnes, makes a lease of the whole manor, reserving such a sum only as amounted to the ancient rent: this lease shall not bind the issue or successor. But where the reservation was several, viz. reserving the ancient rent in certainty for the lands anciently let, and another distinct rent for the copyhold and services, not usually before letten; the lease was holden to be good as to the lands anciently let, because for them the ancient rent was reserved.

Cro. Jac.
458.
3 Bulf. 290.
Smith v.
Bole.

A prebend usually let, with exception of all crab trees, &c. at 17 *l. per ann.* was now let for three lives at that rent, without the exception, and adjudged that the lease was void to bind the successor, because there was more let than had been anciently; for by the exception of the trees, the fruits and boughs, and soil itself, were excepted, which now by this lease pass to the lessee; and so more being let than formerly, it is not warranted by 32 *H. 8. c. 28.* and then the rent thereout reserved cannot be said to be the ancient rent, and, by consequence, the lease is made void against the successor by 33 *Eliz. c. 10.*

5 Co. 5.
Moor, 197.
Lord
Mountjoy's
case.
Co. Lit.
44. b.

Tenant in tail by special act of parliament having authority to make leases, &c. *reddendo verum & antiquum redditum*, makes a lease of lands anciently demised, and of an acre of waste not before demised, reserving the ancient rent, and so much more as the acre of waste was worth; and yet held, that this addition of acre of waste spoiled the whole lease, because the rent being entire in the reservation issued out of the whole, and out of every part thereof, and the acre of waste being never demised before, it could not be said *verus & antiquus redditus*, which issued out of that which never before yielded any rent at all.

5 Co. 4, 5.
Co. 139.
Cro. Car. 23.
3 Keb. 380.

If two farms have usually been let severally, the one for 20 *l.* and the other for 10 *l.* and a bishop, tenant in tail, &c. makes a lease of both together, rendering 30 *l. per ann.* and dies, &c. this lease shall not bind the issue or successor, for the ancient rent issuing formerly out of the two farms severally, according to the afore-said proportion, now issues wholly out of each, and out of every part of each; and where before the rents were several, now they are entire; and it was said to be but wantonness, to save parchment and paper, to join them together in one lease, when they were usually, and ought to have been let severally; and there was no necessity or colour of convenience to join them in one lease; and if he might join two, he might as well join twenty,
which

which would be very prejudicial to the successor, since it is a kind of seignory and prerogative to have several tenants: therefore, if 40*l. per ann.* had in that case been reserved for the two farms, which is 10*l. per ann.* more than the ancient rent of both; yet this should not bind, not because more is reserved than the ancient rent, (for that the statute allows,) but because by their being joined, if the tenant should prove insolvent, the loss would be greater upon the issue or successor.

Devisee for life, with power to make leases, whereupon the old and accustomed yearly rent shall be reserved, entered and built a new house upon the land, and then made a lease for twenty-one years, reserving only the ancient rent, &c.: it was insisted, that this could not be said to be the ancient rent, because part of it is issuing out of the new house: but the justices would not suffer it to be argued, but held the rent to be well enough reserved.

Leon. 147.
148.
Read and
Nash.

4. Where a Reservation of the whole Rent, or only *pro Rata* on a Lease of Part, shall be good.

On a special verdict the case was in substance no more than this: A bishop seised of two manors in right of his bishoprick, which had usually been let for 67*l. 1*s.* 5*d. per annum**, now makes a lease for twenty-one years of one of those manors only, reserving the whole rent: and if this was a good lease within the statute 1 *Eliz. c. 10.* was the question? The objections against it were: 1. That the remedy for the rent was not so ample and beneficial as it was before; for before, the rent issued out of both, now, out of one only, and the statute is to be taken strictly, to prevent dilapidations and decay of spiritual livings. 2. That this was not the old accustomed rent, because it did not issue out of the same lands, but out of less; and if that be allowed, you may leave but a moiety or quarter part, or but one or three acres, to answer 100*l. per annum*. 3. It was objected, that now the bishop could not lease the other manor at all; for if for the ancient rent, perhaps it is not worth so much; if for less, it is not the ancient rent: or supposing he could lease the other manor for less rent, yet the ancient rent, which the statute chiefly designed to provide for, will not be at all the better secured; for now being reserved out of one manor only, that will be the only fund to answer it for the future; and if the value of lands should fall, as probably they may, there will be no sufficient security or distress for the old rent, though perhaps the new rent, being less, will be abundantly secured: and of this opinion was *Vaughan* and *Ellis*; but *Atkins* and *Windham* held it a good lease: and after the death of *Vaughan*, *North* being of the same opinion, it was adjudged a good lease, and this judgment affirmed in *B. R.* upon a writ of error; for the ancient rent being reserved, the statute is satisfied, and what is not in lease is in the bishop's own hands. And though the distress for the ancient rent be not so large, yet the bishop cannot complain, having the residue of the lands in his own hands, or out upon another lease; and by *Windham*, if a bishop should enlarge a garden

Mod. 203.
2 Mod. 57.
3 Keb. 192.
372. 583.
595.
Follexf.
176.
1 Freem. 92.
119. 165.
179.
Thread-
needle v.
Lynam.

or orchard, it would be unreasonable so to tie him up, as to force him to hold the residue of the tenancy in his own hands, and never suffer him to demise it again, because he cannot reserve the ancient rent, as that issued out of every part of the old land: but he agreed, that if the bishop in this case had made a lease of both manors, reserving the ancient rent out of one of them only, this would not have been good to bind the successor, because he departed with the whole land chargeable with the ancient rent, and yet confined the successor's remedy for such rent to part of the lands only: but in this case he having the residue of the lands in his own hands, it is clearly out of the mischief of the statute.

§ Co. 5, 6.

If lands usually let at such a rent descend to two coparceners in tail, each may let her own part, reserving rent *pro rata*: for it would be unreasonable that the forwardness or perverseness of one sister, in not complying to join in a lease with the other sister, should hinder them both from making leases at all: and the descent, which caused the coparcenary, was an act of law, which they could not prevent or hinder, and the acts of law do no injury to any one. So, if a manor was usually let at 10 s. *per annum* rent, and a tenancy escheats, and then a lease is made of the whole manor, reserving 10 s. *per annum*, this is good, though the rent issues also out of the tenancy, and that never was in lease before; for the escheat was the act of law, and by that the feignory being extinct ought not to turn to the prejudice of the lord. But if the lord had purchased the tenancy, he could never have leased it within 32 H. 8. c. 28. or the other statutes, because the purchase was his own act; and therefore the tenancy having never been leased before, no ancient rent can be reserved thereout, no more than a manor which had never been leased can now be leased by virtue of any of those statutes.

Co. Lit.

44. b.

3 Keb. 379, 380.

§ Co. 4, 5.

[(a) But according to the Touchstone, p. 279. if tenant in tail of land let a part of it that hath been accustomedly let, and reserve the rent *pro rata*, or

The books are not agreed, whether a bishop, tenant in tail, or any spiritual person, &c. of lands usually let for a certain rent, may make a lease of part thereof, reserving rent *pro rata*; but the better opinion seems to allow of such leasing (a), because this in effect is the ancient rent; and otherwise, perhaps, they could not lease at all, if they had not a power of dividing the great farms; and *Mountjoy's* case, which is contrary, they say, was adjudged upon a private act of parliament for enabling a particular tenant in tail to make leases, which neither his estate nor the law would allow of (as the lease there was for 300 years): but upon the other statutes, if all the circumstances thereby required are observed, a lease of part, rendering a proportionable rent, seems to have no inconvenience in it, or be any ways against the true meaning of the statutes.

more than after the rate; this is not a good lease. And it seemeth to be exceedingly doubtful, whether bishops, &c. have the power of dividing their estates, and leasing them out in smaller parcels: for as every part of the estate is no longer answerable for every part of the rent, the security is lessened by such a division; and there may possibly be an entire deficiency of remedy for portions of the rent, by reason of the failure of tenants, deficiency of distress, produce, &c. of the parcels out of which they are payable. When therefore a division is deemed necessary, it hath been judged safest, on account of this possible injury to the successor, to apply for the aid of the legislature. See two acts to this purpose in the 34th and 35th of the present king empowering the Bishop of Ely to grant out estates belonging to his see in several smaller parcels.—However, in point of fact, partitions have been made without the sanction of parliament, and that, under the opinion of some of the ablest lawyers in the profession. *Idea quæritur.*

Rule 8. That such Leases must not be made without Impeachment of Waste.

The last rule to be observed in the making of leases upon these statutes is, that they must not be made without impeachment of waste. Though this is expressly provided for in the 32 H. 8. c. 28. only, yet it hath been resolved upon the 13 Eliz. c. 10. and held upon 1 Eliz. c. 19. that the several persons therein respectively mentioned are by the equity thereof restrained from making leases punishable of waste: for if, as the preamble speaks, long and unreasonable leases are the chiefest causes of dilapidations, and the decay of all spiritual livings and hospitality, much more would they be so if they were made punishable of waste; and therefore those statutes being made to prevent such unreasonable leases for the future, must, by consequence, prohibit the power of committing or suffering waste. But if bishops be not restrained by 1 Eliz. c. 19. from making such leases, yet they must at least be confirmed by the dean and chapter, otherwise they will be void by 32 H. 8. c. 28.

Co. Lit. 44.
b. 45. a.
6 Co. 37.
Dean and a.
Chapter of
Worcester's
case.
Palm 468.
Comp. In-
cumb. 357.

And although they are confirmed, yet if the lessee should go about to commit waste, he may be stopped by prohibition, and attached if he persist in it; for so may the bishop himself, or any ecclesiastical person, if they commit waste, either in cutting down the timber trees, or pulling down or defacing the houses or possessions of the church: and such waste is also a good cause of deprivation; and as the bishop or other ecclesiastical person cannot justify the doing of such waste, other than for reparations, fuel, or such like necessities, no more can their tenants or lessees, who derive under them.

11 Co. 49.
98. b.
3 Bull. 91.
Moor, 917.
Zaker's case.
2 Roll. Abr.
813.
Hob. 36.
Drury v.
Kent.
3 Inst. 304.
Godb. 259.
2 Bull. 279.

But where a prohibition was moved for, to hinder a parson from the digging of lead and coal mines in his glebe, the court denied it, because he having the fee in him in as high a manner as ever any body will have it, if he cannot open the mines, they will never be opened at all. Nor is this opening of mines any cause of deprivation by the canon law: and the reason of prohibiting the cutting down of trees in the church-yard by 35 E. 1. stat. 2. is, because they were planted in defence of the church, and also because such cutting them down is waste*. And it is said in one book, that the parson hath such an estate in him, that he may maintain an action of waste, for waste in cutting down trees by his tennors.

Sid. 152.
Lev. 107.
Keb. 557.
Count de
Rutland's
case.
* They
may be cut
down for the
repair of the
chancel or of
the church
by the stat.

Note; Leases may be made without impeachment of waste two ways; 1. Expressly by words in lease, declaring the same: or, 2. Impliedly by construction of law; as if a lease be made for life, the remainder for life, this is punishable of waste, and so not warranted by the statutes; because in waste the place wasted is to be recovered, as well as treble damage, which the reversioner in this case cannot do, without destroying the intermediate estate for life.

6 Co. 37.
Cro. Cas.
95.

But if a lease be made to one for three lives, this lease is good, because it is not punishable of waste, and the occupant, if any happen,

6 Co. 37.

Leases and Terms for Years.

happen, shall be punished for waste within the statute of *Gloucester*, c. 5. which gives an action of waste against any one that held in any manor for term of life or years; and an occupant in this case holds for term of life.

(F) Of Leases by Parsons, Vicars, and others, with respect to other Qualifications.

AS to leases made by parsons, vicars, and others, having benefices or promotions with cure of souls, these things are to be observed:

Co. Lit. 44.
Comp. In-
cumb. 359.

1. That parsons and vicars are expressly excepted out of 32 *H. 8.* c. 28.; so that they are not, as other sole corporations, enabled by that statute to make any leases to bind their successors without the confirmation of the patron and ordinary, but remain as they did perfectly at common law, for any thing in that statute.

2. That they are not restrained by 13 *Eliz. c. 10.* from making leases for twenty-one years, or three lives: but then such leases must not only be confirmed by the patron and ordinary, but must also be made with conformity to the eight rules or qualities mentioned, otherwise they will not bind the successor. 3. They, as well as others, are restrained by 13 *Eliz. c. 10.* from making leases for any longer time, notwithstanding any confirmation or conformity to the rules before-mentioned.

Moor, pl.
836.
Cro. Ellz.
775.
Roll. Abr.
476.
Dyer, 292,
293.

But it is necessary that the lessor be a priest; for if a mere layman be instituted and inducted to a benefice, and make a lease for twenty-one years, or three lives, which is confirmed by the patron and ordinary, and then the incumbent be deprived *quia merè laicus*; yet the lease remains good, and shall bind his successor, because it was made by a *parson de facto pro tempore*, whereof the law takes cognizance by the solemnity of his institution and induction; and the people can take notice of no other. So, if the parson were after deprived for contracting matrimony when the law was that priests could not marry, or for not reading the articles within two months, &c. yet his leases being confirmed by the patron and ordinary remain good against the successor, as well since the statutes before-mentioned, as they did at common law before the making thereof; because being made by a lawful incumbent *pro tempore existente*, they ought not to be impeached by any subsequent act or neglect of the parson.

Geo. Jas.
552.
Palm. 2a.
Bishop of
Ossory's
case.

But if he who makes such lease be but a supposed incumbent, or be in a church by a super-institution, or the like seeming title, and so be reputed the legal incumbent, he cannot make a lease to bind after his death, or the death of the true incumbent: therefore, where *A.* was made lawfully bishop of *Ossory* in the time of *Edw. 6.* and after, in the time of *Queen Mary*, *B.* was consecrated bishop of that diocese, living *A.*, who was not deprived, and then *B.* made a lease of parcel of the possessions of the bishoprick, and then *A.* died, and *B.* survived him about three years; yet after his death it was adjudged, that this lease should

not bind the successor, because it was a voluntary act, and tended to the impoverishing of the successor, and *A.* not being deprived, continued bishop still; so that the consecration of *B.* was a mere nullity, and never made him bishop of that diocese: but yet they held, that all judicial acts done by *B.* as institutions, certificates, &c. were good, because they were necessary, and could then be performed by no other.

So, if one were appointed bishop of a diocese, but never ordained or consecrated, (as, it is said, in the time of *Ed. 6.* some were not,) then leases made by such bishops, though confirmed by the dean and chapter, will not bind their successors, because for want of ordination and consecration they are no bishops at all, and consequently, their acts null and void in themselves. But if one were lawful bishop at the time of making such lease, no deprivation after will avoid the lease, because there was nothing wanting when it was made, and the deprivation after shall not impeach that which was good in itself before.

Bro. tit.
Leases, 68.

If the incumbent, be he clerk or layman, were under the age of twenty-one years at the time of making a lease, yet shall not his successor avoid it for this cause, if there was nothing else wanting; for though he ought not to have been admitted under age, yet after such admission he continued rightful parson till deprived, and then all acts done by him in the mean time continue good and unavoidable; and in his politick capacity, as parson, his age is not material or imputable.

Bro. tit.
Age, 80.

Though leases made by parsons or vicars be in all respects well made, yet by non-residence they become void by virtue of the statute 13 *Eliz. c. 20.* which is as followeth; viz. "That the livings appointed for ecclesiastical ministers may not by corrupt or indirect dealings be transferred to other uses, be it enacted, That no lease hereafter to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, and not being appropriated, shall endure any longer than while the lessor shall be orderly resident, and serving the cure of such benefice, without absence above eighty days in any one year, but that every such lease immediately upon such absence shall cease and be void, and the incumbent so offending shall for the same lose one year's profit of his said benefice, &c. and that all chargings of such benefices with cure with any pension or profit out of the same to be yielded or taken, other than rents upon leases to be made according to the meaning of this act, shall be utterly void: Provided, that every parson, by the laws of this realm allowed to have two benefices, may demise the one of them, upon which he shall not be then most ordinarily resident, to his curate only that shall there serve the cure for him; but such lease shall endure no longer than during such curate's residence without absence above forty days in any one year."

This statute, though it extends only to those who have the cure of souls, yet by reason of the multiplicity of parsonages and vicarages in *England*, hath been held to be a general law, whereof the judges are bound to take notice, without pleading it.

2 Roll. Abr.
465.
Yelv. 106.
1 Brownl.
208. 4 Co. 120.

Upon

Yelv. 106.
Brownl. 208.
Jenning v.
Haithwait.

Upon an action of trespass brought, and not guilty pleaded, the jury found the defendant vicar of *D.* and that he such a day leased his vicarage to *J. S.* for three years, rendering rent, which *J. S.* assigned one acre, parcel thereof, to the plaintiff, and that the defendant was absent several quarters in one year, viz. sixty days in each quarter: it was adjudged for the defendant, that this was such an absence as avoided his own lease within that statute.

Noy, 116.
Sidner v.
Calvert.

So, it is said to have been adjudged, that if a parson be absent at several times, viz. ten days at one time, and twenty days at another, and so till eighty days be fulfilled in one year, that this is such a non-residence within the statute as shall avoid his lease.

Bulf. 111.
Sheppard v.
Twouldie.
[This case
in Bulstrode
hath been
since denied
to be law:
such a con-
struction
would en-
tirely defeat
the statute,
for at this
rate an incum-
ber need be
resident only
five days in
one year. *Quilter v. Muffendine*, *Gilb. Eq. Rep. 228.*]

And yet, where it was found by special verdict, that a parson made a lease of his glebe and tithes, and was absent by the space of eighty days in a year; yet because it was also found that he did upon all occasions resort to his parish, and perform divine service in the church four days in a week, and duly serve the cure thereof, though he lived in another parish, which was a non-residence within the statute *H. 8.* yet this was not such a non-residence as should avoid his lease within the statute of *13 Eliz. c. 20.* for that, they held, must be a non-residence for eighty days together at one time in the year.

Degg. 126.
[(a) This
allegation is
clearly un-
necessary.
Mills v.
Ethridge,
Bunb. 210.]

By this it appears, the surest way to avoid the lease (if the case will bear it) is, to allege the absence for eighty days together (a), because then the cure must most certainly be neglected: but since it also appears, that if the cure were not neglected, though the absence were for eighty days in a year at several times, that this should be no avoidance of the lease; therefore the other cases, which hold the absence at several times, till eighty days be accomplished in a year, sufficient to avoid the lease, must be intended such an absence as was accompanied with the neglect of the cure; otherwise, the cases will not be consistent and uniform.

Degg. 126.

And note; Where any lease becomes void for absence above eighty days, no confirmation of the patron and ordinary can save it. [In such case it is merely void, and the lessee cannot maintain an ejectment even against a stranger, who enters without any colour of title.]

Doe v. Bar-
ber, 2 Term
Rep. 749.
Cro. Eliz. 88.
Gosnal and
Kindle-
marsh. Cro.
Eliz. 490.
Earl of Lin-
coln v.
Hoskins.

If an information be brought on the statute *13 Eliz. c. 20.* or if that statute be pleaded to avoid a lease, bond, or covenant, it ought to be said, not that the incumbent was absent, but also that he was absent eighty days & *ultra*: for to say eighty days, and nothing more, is not sufficient within this statute, which says above eighty days; for he may be absent eighty days, and come again in the night of the 80th day; and if so, he is no offender within this statute; and therefore it ought to be expressly alleged, and not by implication.

3 Bulf. 202.
Rudge and
Thomas.

So, it must also be said, that he was absent eighty days & *ultra* in a year; otherwise it will not be good, for so is the statute expressly.

Also,

Also, it must be shewed that the incumbent was voluntarily absent (a); for if he were absent, or did not serve the cure, by reason of sickness, suspension, or because he was inhibited by the ordinary from serving the cure, or was ejected by any out of the parsonage-house, or upon the account of any other restraint, this is no such absence as will avoid any leases, &c. within these statutes.

Cro. Eliz.
590. Moor,
540.
6 Co. 21.
Butler and
Goodal,
Cro. Eliz.
100. Col-
lins v.
Vaughan,

Moor, 448. [(a) But it is now settled, that it is not necessary to aver that the absence was voluntary, for if it be otherwise, it is matter of excuse, which it lies upon the parson to shew. Mills v. Etheridge, Bunb. 210. Quilter v. Mustendine, Gilb. Eq. Rep. 228. Note; A sequestration of a benefice under a *feri facias* is no impediment to the serving of a cure; so that the non-residence of the incumbent in such a case is a clear avoidance of any lease he may have entered into. Doe v. Mears, Cowp. 129.]

These last cases prove the unreasonableness of the construction that has been made of this statute in the following case: Where a parson, after 13 Eliz. c. 20. made a lease to one, for twenty-one years *a die consecrationis*, of lands usually letten, rendering the ancient rent; and this was confirmed by the patron and ordinary; then the parson died; and the question was, if his death was such a non-residence as that eighty days after being incurred should avoid the lease? Moor reports this case, that the judges were divided in it, and that though judgment was given against the defendant, under-lessee of A. in an action of debt brought by A. for the rent; yet the reason of it was for his misrecital of the statute, whereby he would have avoided the lease to A., and, consequently, the under-lease to himself. But Cro. reports the case to be adjudged, that the death of the parson was a non-residence within that statute to avoid his leases; for, the court said, the intent of the statute was to provide against dilapidations, and for maintenance of hospitality, and therefore must be intended to avoid leases, not only for non-residence, but also by the death or resignation of the parson; for otherwise dilapidations would be in the time of the successor, and he could not maintain hospitality. And Hale says, this was adjudged, as it is reported by Cro. by the opinion of three judges against one, but says, it was a hard opinion: and therefore (b) where the same point came again in question, it was adjudged that the death of the parson was not such a non-residence as should avoid a lease duly made. 1. Because the intent of the statute was only to oblige the parsons to residence, by imposing a forfeiture upon them of a year's value of their benefices if they did not reside, which could not be, if death were a non-residence within that statute; for, immediately upon the death of the incumbent, all the profits of the living, except for supply of the cure in the vacation, belong to the successor; how then could the bishop sequester them for the use of the poor, for a whole year, as the statute directs? 2. It is plain the statute meant a wilful negligence, because it says, *the party so offending*; but death is involuntary, and cannot be punished. 3. The statute of 14 Eliz. c. 11. which allows leases of houses in market-towns for forty years, would be of no effect, if death should be interpreted a non-residence to avoid them. 4. The confirmation of the patron and ordinary would be to no purpose,

Cro. Eliz.
123.
Moor, 270.
Mott and
Hales.

(b) 2 Lew.
61. Vent.
244.
3 Keb. 46.
107. 193.
Bayly and
Munday.

and their permission to make leases for twenty-one years or three lives, with such confirmation, would be vain and idle, if such leases should continue no longer than during the parson's life; for he might have made them good during his own life, without any such permission or confirmation. 5. These cases above cited prove that the non-residence, within this statute, must be such as is voluntary; and therefore sickness, inhibition by the ordinary, &c. which are involuntary, are a good excuse of non-residence within this statute, and so have been allowed.

(b) 14 Eliz.
c. 11. § 15,
16.

But for as much as several evasions were found out to frustrate and elude the true intent of the said statute of 13 Eliz. c. 20. therefore, by another (b) act of parliament it was provided as followeth; viz. "That whereas sundry evil disposed persons have defrauded the true meaning of the last mentioned statute, by bonds and covenants, of suffering other persons to enjoy ecclesiastical livings, and the fruits thereof, for that such bonds and covenants are not in law taken to be leases, although indeed they amount to as much; be it therefore enacted, That all bonds, contracts, promises, and covenants hereafter to be made, for suffering or permitting any person to enjoy any benefice or ecclesiastical promotion, with cure, or to take the profits or fruits thereof, (other than such bonds and covenants as shall be made for assurance of any lease heretofore made,) shall, to all intents and purposes, be adjudged of such force and validity, and not otherwise, as leases by the same persons, made of such benefices and ecclesiastical promotion, with cure; and be it further declared and enacted, That all leases, bonds, promises, and covenants, of and concerning benefices and ecclesiastical livings with cure, to be made by any curate, shall be of no other or better force, validity, or continuance, than if the same had been made by the beneficed person himself, that demised, or shall demise the same to any other curate."

(c) 43 Eliz.
c. 9.

And by another (c) act for the continuance of the said statutes of 13 Eliz. c. 20. and 14 Eliz. c. 11. there is another clause, by way of addition, "That all judgments to be had, for the intent to have and enjoy any lease contrary to the said statutes, shall be deemed void, in such sort as bonds and covenants are appointed to be void for that purpose."

The statute of 13 Eliz. c. 20. as appears by the express words thereof, extends only to leases to be made after that statute; therefore, where a parson made a lease for sixty years before the 13 Eliz. which was confirmed by the patron and ordinary, and then the parson died, and his successor, after the statute of 14 Eliz. c. 11. gave a bond that the lessee should enjoy the lease during the term, and after became non-resident for above eighty days in one year, and so would have avoided both the lease and the bond; yet in an action of debt brought thereupon, it was adjudged, that neither of them were within either of those statutes; for as to the lease, that being made and duly confirmed before 13 Eliz. c. 20. was good at common law; and then the bond given for enjoyment of such lease, though it were given after 14 Eliz. c. 11. yet was neither within the words nor intent of that statute, which extends only

to bonds given after that statute, for enjoyment of leases, contrary to 13 *Eliz. c. 20.* which this lease, that was made before, cannot be said to be : nor could the successor himself avoid this lease, so that the bond given for the enjoyment thereof cannot be unlawful.

Also, the said statute of 13 *Eliz. c. 20.* extends only to avoid leases for non-residence or absence for above eighty days in one year, and the statutes of 14 *Eliz. c. 11.* and 43 *Eliz. c. 9.* avoid only bonds, covenants, promises, and judgments, made or given for enjoyment of ecclesiastical livings or benefices, become void for such non-residence or absence, and not where the living, &c. became void by death, resignation, or deprivation, &c. which are avoidances at common law.

Comp. In-
cumb. 361.
264-

Therefore, where a parson covenanted with *A.* that he should have his tithes for thirteen years absolutely, without saying, if he should so long live, and continue incumbent, and afterwards, before the expiration of the term, resigned his benefice, and so became absent or non-resident for above eighty days ; and his successor, after induction, ousted *A.* of the tithes ; upon which he brought an action of covenant against the first parson, who pleaded the statute of 14 *Eliz. c. 11.* in bar ; it was adjudged by *Coke*, *Dodderidge*, and *Haughton*, that though this lease was void by the resignation, yet the action well lay upon the covenants in the lease ; for the 13 *Eliz. c. 20.* avoids leases only where the parson becomes absent or non-resident for above eighty days in a year ; and the 14 *Eliz. c. 11.* as appears by the preamble, intended only to avoid bonds, covenants, and promises made or given for the enjoyment of ecclesiastical livings, or the fruits thereof, upon pretence that they were not leases within the said statute 13 *Eliz. c. 20.* and enacts, that they shall be of such force and validity, and not otherwise, as leases by the same persons would have been, and so extends to avoidance thereof for absence, or non-residence, for above eighty days only, as the other act did the leases themselves ; but this resignation was an immediate avoidance of the lease at common law, and an action thereby attached in the lessee immediately, for breach of the covenant before the avoidance, by absence or non-residence for above eighty days, by force of the statute had incurred : and these statutes did not intend to intermeddle with avoidances at the common law, but left them as they were before, and, by consequence, this resignation, which defeated the interest of the lessee at common law, was a breach of the covenant, for which the action well lay. So, they held, if the parson had died, or been deprived, &c. which would also in consequence have defeated the interest of the lessee ; yet an action of covenant would have well lain against him or his executors ; because the covenant was absolute, and this avoidance of his interest was an avoidance at the common law, and not by force of either of the statutes ; and then at common law such lease or covenant is good, and the parson, at his peril, is to take care that the lease or covenant be made good according to his agreement ; as if tenant for life covenants that another shall

3 Bull. 202.
Roll. Rep.
403.
Thomas v.
Rudge.

enjoy

enjoy his lands for twenty-one years, and afterwards commits a forfeiture, yet he shall be bound by his covenant.

Brownl. 125.
Wheeler and
Heydon, per
Haughton.

But if a parson makes a lease for thirty or forty years, if he so long live, with covenants for enjoyment thereof accordingly, this so qualifies the lease and covenant, that though his death will determine the lease, yet it will be no breach of the covenant. But as by such lease and covenant he takes upon him to do no other act whereby to avoid the lease: therefore, if he resigns, or otherwise voids the living, an action of covenant will lie against him. But if this clause were added, viz. "*and shall so long continue parson,*" then this clause leaves him at liberty to avoid it by resignation, non-residence, or otherwise, because it qualifies the lease to continue no longer than whilst he continues parson, and in the mean time leaves it in his election how long or short a while that shall be.

Moor, 641.
Webb. v.
Maugrave.

A clerk entered into an obligation, the condition of which was, that he being presented, instituted, and inducted to a benefice then void, should, upon request of the patron, resign; and he afterwards made a lease to the patron, and then was absent for above eighty days together, whereby the lease became void; and then being requested by the patron to resign, which he refused, the patron brought an action of debt upon the bond, to which the defendant pleaded the statute of 13 Eliz. c. 20. & 14 Eliz. c. 11. and that after his induction he let the lease to his patron the plaintiff, and then was absent above eighty days together, and averred that the obligation was made for the enjoying of the benefice let by the said lease, and to the intent to compel him not to avoid the lease by absence, for fear of being required to resign, and demanded judgment, &c. upon which the plaintiff demurred; and the whole court held the plea good, and the averment to be very apt, because the obligation being made generally to resign upon request, might well be averred to be for this particular purpose, and so void.

Cro. Eliz.
22. 490.

This case fully proves, that the bonds which have been attempted and taken from parsons upon making leases, with condition that they should duly serve the cure, and not be absent from their benefice by the space of eighty days when they appear, or can be averred to be given for security of leases made by such parsons, will be void within these statutes, and no recovery allowed thereupon. But bonds, with condition not to resign, or do any other act which should cause an avoidance at common law, though they are made for security of such leases, yet they will be good and binding, unless the parson can shew an avoidance by absence for above eighty days, and also aver that the bond was given to prevent such avoidance; for otherwise, if the lease becomes void by resignation, or other voluntary act of the parson, (except such absence for above eighty days,) the bond is presently forfeited at common law; and the statutes will no more relieve upon account of any absence after, than they would against a covenant for that purpose. But if such bonds were given, with a condition in the disjunctive, not to be absent above eighty days, nor to
resign

reign or do any other act, which should cause an avoidance of the lease at common law; *quare*, whether the whole bond be absolutely void, or if it shall be good or bad, according as the avoidance first happens to be either upon these statutes or at common law?

A parson let his rectory for three years, and covenanted that the lessee should have and enjoy it during the said term, without expulsion, or any thing done or to be done by the lessor; and was also bound in an obligation to the lessee for performance of covenants; and afterwards, for not reading the articles, was *ipso facto* deprived by the statute 13 *Eliz. c. 12.* whereby the lease became void: yet it was the opinion of all the justices, that the bond was not thereby forfeited, because the lessee was not ousted by any act done by the lessor, but rather for a nonfeasance, and so out of the compass of such covenant; as if one be bound not to do any waste, permissive waste is not within the danger of it. But otherwise it would have been, if the lessor had covenanted not to omit the doing of any thing whereby the lease should become void.

4 Leon. 38,
9. pl. 104.
Degg. 128.
Comp. In-
cumb. 364.

So, if one be bound by obligation to make such a lease for twenty-one years, this is good, and shall bind him: but then it seems, that if this lease become afterwards void for non-residence, and the bond be put in suit, if it be averred that the bond was given for security of such lease against non-residence, this will avoid the bond also.

3 Bulf. 203.
Comp. In-
cumb. 364.

If the parson's lessee assign over his lease to another, and the parson be absent above eighty days in a year, the lessee may also plead the statutes of 13 *Eliz. c. 20.* & 14 *Eliz. c. 11.* for the avoiding of his own assignment and agreement with the assignee; because if he assigned over no more than what the parson demised to him, such assignment must be subject to the same determination the original lease itself was; and if that be determined, he who claims under the parson, may as well shew it in avoidance of his own assignment, as the parson might in avoidance of his own lease.

Bulf. 111.
Comp. In-
cumb. 364.

It hath been held, that if a parson makes a lease for years, which after becomes void by the statutes for non-residence, and there is an obligation for performance of covenants, although there be some covenants which do not concern the lease comprised in the indenture, yet is the bond entirely void; otherwise all the meaning of the statute would be defrauded by putting a lawful covenant into the indenture.

Cro. Eliz.
529, 30.
Lee & Ux.
v. Colehill.

Though the statutes aforesaid make void leases, bonds, &c. where the parson is non-resident, and neglects to serve the cure for above eighty days together, yet such leases or bonds, &c. are not void *ab initio*, but only from the time that such absence of eighty days shall be completed: for the words of the statute are, *shall endure no longer but while the lessor shall be ordinarily resident, (therefore so long it shall endure,) and serve the cure without absence above eighty days in one year; but that every such lease, immediately upon such absence, shall cease and be void:* therefore, till such absence

Comp. In-
cumb. 364.
Degg. 124.

sence of above eighty days be accomplished, the lease is good and in being.

Cro. Eliz.
78. Wallis
and Cox.
Cro. Eliz.
245.

Accordingly it hath been adjudged, that if such lease by indenture be made, containing covenants on the lessor and lessee's part, and after by absence for above eighty days both the lease and covenants become void; yet an action of covenant well lieth for the lessor or lessee, for any covenant broken before the end of the eighty days absence. But if the lessor was absent for above eighty days, though part of the time incurred pending the action, and before plea pleaded, yet it is a sufficient absence, and may be pleaded in avoidance of the lease.

3 Leon. 102.

Dyer, 372.
a. b.

Therefore, if in such case an action of covenant be brought, the defendant must not only plead the statutes, which make the lease and covenants void, but must also plead the performance of covenants to the time of the eighty days absence expired.

Cro. Eliz.
490. Earl of
Lincoln v.
Hodkins.

If those statutes be pleaded to avoid any action, care must be taken not only to allege the absence or non-residence fully, but also that the statutes be truly recited: therefore, where the statute of *Eliz.* was recited with this clause, *tam diu* (where the words are *tam cito*) *quam, &c. aut aliqua pars inde venerit ad aliquam possessionem, vel usum inhibendum, vel, &c.* (which words, by 14 *Eliz. c. 11.* are repealed, and appointed to be omitted,) judgment was given against the party for this misrecital, without any regard to the matter in law.

Comp. In-
cumb. 362.
Leon. 100.
St. John v.
Petit.

Though the statute of 13 *Eliz. c. 20.* allow a parson or vicar that hath benefices to demise the one of them, upon which he shall not be ordinarily resident, to his curate, yet it is thought from 14 *Eliz. c. 11.* that if such curate lease the same over to another, though he himself is not absent above forty days in any one year, if the incumbent or parson be absent above eighty days in the same year, that this shall avoid the curate's lease; because 14 *Eliz. c. 11.* says, that all leases, bonds, &c. of benefices and ecclesiastical livings with cure to be made by any curate shall be of no other nor better force, validity, or continuance, than if the same had been made by the beneficed parson himself that demised or shall demise the same to any curate. Yet by *Tanfield*, when a parson leaseth to his curate, who leaseth over, the statute doth not make the lease void by any absence of the parson, but of the curate only for forty days; for otherwise, as he held, the intent of the statute might be easily frustrated, which was, that he that served the cure should be the occupier of the glebe and tithes belonging to the church, and none other: but *quare?*

Comp. In-
cumb. 362.

But admitting that the parson's absence for above eighty days should not avoid the curate's lease, yet we must distinguish who shall be said a sufficient curate for that purpose: and that is only one who is legally admitted by the ordinary of the place, according to the laws of the land: for otherwise he is no curate, although he serves the cure, and is resident; so that if the parson should make a lease of the glebe and tithes to such a nominal curate, yet by the parson's absence for above eighty days the lease will be avoided; and if they should be sequestered, in this case, according

According to the statute, the parson cannot plead that they are let to his curate, because he is no curate in law, and his having a cure there is an offence against the law, of which it is not reasonable that either the incumbent or curate should take advantage.

Note; It has been held, that a parsonage may be a manor; as if, before the statute *quia emptores terrarum*, the parson, with the patron and ordinary, had granted parcel of the glebe to divers persons to hold of the parson by divers services; this makes the parsonage a manor: and if the same be a copyhold manor, then, notwithstanding all the statutes before rehearsed, parsons and vicars, as well as all other ecclesiastical persons, may grant copies for life, in tail, or in fee, according to the custom of the manor: for the copyholder doth not derive his estate out of the estate or interest of the lord only, but from the custom, and is said to be in by the custom, without any regard to the person of the grantor; and these grants by copy are good without the confirmation of the patron and ordinary, and are not avoided by non-residence or death, &c. of the parson; neither do any of the statutes aforesaid extend or relate to rectories and tithes that are impropriated and become lay-fee, and remain in the hands of laymen, but that they may do with them as with any other inheritance whereof they are seised. But appropriations in the hands of bishops, colleges, or other ecclesiastical persons are liable to the aforesaid statutes and rules, as other inheritances whereof they are seised; and so are impropriations, if by presentation, &c. the vicarage be restored to the church out of which it was endowed; for by such presentation they are become for ever after presentable, and the impropriation is destroyed.

Comp. Incumb. 362.
Roll. Rep. 202, 203.
4 Co. 23, 24.

In debt upon bond to perform covenants in a lease made by the defendant, the parson, to the plaintiff, the defendant pleaded, that the lease was void by the statute of 14 *El.*, because he was absent from his benefice above the space of eighty days; part of which time incurred pending the action, and before the plea was pleaded. It was the opinion of the court, that the plea was good (a). But exception was taken to the pleading, because the defendant says, that the said church is a parochial church, *cum curâ animarum*, but does not say, that it was so at the time of the lease and obligation made; for it may be, that at the time of the lease there was a vicar, and then it was not *cum curâ animarum*. And upon that exception judgment was given for the plaintiff.

3 Leon. 102.
Coze's case.
[(a) As the full statute time had not incurred at the commencement of the action, and the statute could therefore not then attach, this plea would now, it

seems, be adjudged bad upon that ground. *Evans v. Prosser*, 3 Term Rep. 188. Whether, at law, a clergyman may plead his non-residence in order to discharge himself of the obligation of his contract, is a point which doth not appear to have been yet judicially determined. Whether, in equity, he shall come forward as plaintiff, and insist upon the breach of a positive law, and a neglect of his personal duties, in avoidance of an agreement fairly entered into, is a point, one would think, too clear to admit of a doubt. And yet an attempt of this kind was not long ago made by Mr. Wm. Atkinson, the parson of Hillington in Norfolk, who filed a bill in the Exchequer for an account of tithes, and to set aside a composition he had entered into with his parishioners, (among whom was his patron,) upon the ground that such composition was void, because, in the words of his bill, "he was absent from Hillington and without being resident therein or serving the said cure for above four-score days in one year after the signing of the agreement of the 14th of October 1784;" (the composition he had entered into with his parishioners); "and that he was absent above four-score days in 1785, and before the 10th of October in that year, and had not any other benefice during all that time." His bill was dismissed with costs. *Atkinson Clk. v. Sir Maria Browne Folkes, and others*, July 13, 1792.]

Godb. 29.
pl. 38.
Marrow's
case.

Debt upon a bond with condition to pay such a sum, the defendant pleads the statute 14 *Eliz. c. 11.* that all covenants, bonds, &c. made for the enjoying of leases made of spiritual livings by parsons, &c. should be void, and avers that this bond was made for the enjoying of such a lease. But because the condition was expressly for payment of money, the justices held it clear law, that the bond was good, and out of the statute: and so by this case it appears, that such averment will not hold good against an express condition to another purpose. And this differs from *Hargrave* and *Webb's* case, which was only to resign generally on request, and therefore might well and consistently be averred to be to the intent to compel him not to avoid the lease by absence, for fear of being required to resign.

(G) Of the Consent or Confirmation of others to Leases made by Ecclesiastical Persons: And herein,

1. Where Confirmation is necessary either in respect of the Leases or Estates made, or of the Persons making the same.

Comp. In-
cumb. 366.
Co. Lit. 44,
45.

AS to this it is to be observed, that no confirmation whatever of any lease or estate made by ecclesiastical persons not conformable to the eight rules or qualities before-mentioned, will bind the successor, except only in the case of the concurrent lease: for that not being construed to be within the restraint either of the 1 *Eliz. c. 19.* or 13 *Eliz. c. 10.* remains as it did before at common law; and as at common law confirmation was necessary to make such lease good against the successor, not being warranted by 32 *H. 8. c. 28.* (unless the old lease were surrendered or expired within one year after the making of the new lease), so it is still, and with confirmation will bind the successor. This therefore seems to be the chief, if not the only use of confirmation, as to any persons allowed to make leases within 32 *H. 8. c. 28.* But there appears this difference between concurrent leases made by archbishops or bishops upon the 1 *Eliz. c. 19.* and concurrent leases made by other ecclesiastical persons on the 13 *Eliz. c. 10.*: for upon the 1 *Eliz. c. 19.* the concurrent lease is not restrained to any certain time before the expiration of the first lease, but may be made three, four, five years, or more, before the expiration thereof, so that both leases in the whole do not exceed twenty-one years, upon the construction before taken notice of, that the second lease is void, or at least good by estoppel only, for so many years as are then to come of the first lease: but concurrent leases to be made by any of the ecclesiastical persons within the restraint of 13 *Eliz. c. 10.* will not be good to bind the successor, unless the former lease for years be surrendered or expired within three years next after the making of such new lease: and this is expressly provided for, not by the 13 *Eliz. c. 10.* but by the 18 *Eliz. c. 11.* as hath already been shewn.

3 Co. 75.
13 Co. 60.a.

We are next to consider where confirmation was necessary at the common law, and where it continues so at this day, in respect of

of the persons making any leases or grants of their ecclesiastical possessions. The persons who were restrained by the common law from making any leases, grants, or estates, to bind their successors without confirmation, were only sole corporations, as bishops, abbots, deans, parsons, vicars, prebendaries, and such like; for corporations aggregate might make what leases they pleased, without confirmation of any other persons whatsoever; but the prudence of the common law never thought fit to trust such sole corporations with any alienation or disposition of their possessions to bind their successors, without the concurrence and confirmation of other persons. And though bishops and abbots were construed to have the whole estate and right of the land in themselves, which parsons, vicars, prebendaries, and such like, had not, yet as to the binding their successors they had no more power than the others, without the concurrence and confirmation of the persons substituted and appointed by law for that purpose.

And where such sole corporations make any concurrent lease upon the statutes before-mentioned, the law continues the same at this day, and they must be confirmed in the same manner as any other leases or estates made by the same persons must have been at the common law.

Comp. Incumb. 366.
Co. Lit. 44.

So also parsons, vicars, &c. can make no lease at this day, though it be with conformity to the eight rules before-mentioned, to bind their successors, without confirmation of the same persons who by common law were required to confirm all leases, grants, or estates made by them; for they are expressly excepted out of 32 H. 8. c. 28. and, consequently, continued as they were at common law till 13 Eliz. c. 10. imposed a total restraint on them, as well as all other ecclesiastical persons, to make leases to bind their successors for any longer term than twenty-one years, or three lives. And though by that statute they are left at liberty, as well as other ecclesiastical persons, to make such leases, yet having no ability by 32 H. 8. c. 28. to make them solely, as other sole corporations had; therefore, to make good even such leases against their successors, they must have the confirmation of the same persons, and in the same manner, as they must have had at the common law before the making of any of those statutes.

Co. Lit. 44.
b. Cro. Eliz.
18. Comp.
Incumb.
367.

The grants of ancient offices belonging to ecclesiastical persons are not within any of the statutes before-mentioned, but remain as they did at common law, and therefore may be granted with the ancient fee: but then all such grants must be confirmed to bind the successor, because they must have been so at the common law.

10 Co. 60.

2. What Persons are to confirm such Leases or Estates, and in what Manner.

As to the persons who are to confirm such leases or estates, we must take notice that this varies according to the nature of the persons who make such leases, and the nature of the title of the persons who are to confirm the same.

[It is said by Jones, J. in argument, that a recusant though

disabled to present, shall yet be patron to confirm the lease of the incumbent. Sir W.

Jones, 22.]

Co. Lit.
300. b.
Bro. tit.
Leases 64.
Co. 157.
21 Co. 19.
b.

Therefore, if a parson makes a lease for three lives, or twenty-one years, or less, observing the rule before-mentioned, this is to be confirmed only by the patron and ordinary, and no confirmation of the dean and chapter is required thereto; for they have nothing to do with that which the bishop doth, as ordinary, in the lifetime of the bishop.

Bwo. tit.
Leases 64.
Co. Lit.
300. b.

But if the bishop be patron of the church in right of his bishoprick and also ordinary, then the dean and chapter ought likewise to confirm all leases made by the parson, because in such case the advowson of the church is parcel of the bishoprick, which cannot be charged to bind the successor without the concurrence and confirmation of the dean and chapter; and how far the successor of the parson will be bound in such case, will appear hereafter.

Dyer, 259.
Benl. 80.
Hodges v.
Tucker.

So, where a priest in the cathedral church of *Wells* being parson imparsonce of the church of *W.* made a lease by indenture for 100 years before 13 *Eliz. c. 10.* rendering rent to him and his successors; and this was confirmed by the dean and chapter only, without any confirmation of the bishop, who was patron and ordinary; then the parson died, and his successor accepted the rent, and after, before 13 *Eliz. c. 10.* made a lease for forty years, which was confirmed by the bishop, dean, and chapter; it was adjudged, that the first lease was *ipso facto* void and determined by the death of the parson who made it, so that no acceptance of the rent by the successor after could make it good, for want of the patron and ordinary's consent.

Dyer, 61. b.
106. b.
240. a.
Plow. 529.
Roll. Abr.
481.
Co. Lit.
300. b.

So, where a prebendary in a cathedral church, or an archdeacon, made a lease for years of parcel of their possessions, to which confirmation was requisite, and this was confirmed only by the dean and chapter, without any confirmation of the bishop; it was held, this lease should not bind the succeeding prebendary or archdeacon, because the bishop is patron and ordinary of every prebend, and may be so of an archdeaconry; and therefore, to make good leases by them against their successors, the bishop's confirmation ought likewise to be had, as well as the dean and chapter's.

Dyer, 356.
a. b.
Leon. 235.
Co. Lit.
323.
Roll. Abr.
479.
2 Pulf. 290.
21 H. 6. 9.

But upon the books there seems a manifest diversity between the confirmation of the bishop, as patron and ordinary, without confirmation likewise of the dean and chapter, and their confirmation without the bishop's; as also between the resignation, deprivation, or translation, and the death of the bishop, who so alone confirmed as patron or ordinary: for if any dean, archdeacon, prebendary, parson, or vicar, had made any lease for years at the common law, or should make such lease at this day, whereto confirmation is requisite, and the bishop, as patron and ordinary, confirms such lease, without any confirmation of the dean and chapter, and then the dean, archdeacon, prebendary, parson, or vicar dies, or is removed, and the bishop collates another as patron and ordinary; yet cannot such incumbent avoid the first lease, though it was not confirmed by the dean and chapter, because he came in purely by the collation of the bishop, as patron and ordinary, without any aid or concurrence from the dean and chapter; and therefore, as *Littleton* says, ought to hold himself content, and

Lit. § 548.
Co. Lit.
343. b.

agree

agree to that which his patron and ordinary have done, for he comes in subsequent to such charge: but, as appears by the cases before put, the confirmation of the dean and chapter alone, without the bishop's confirmation likewise, will not be effectual to bind the succeeding archdeacon, prebendary, parson, vicar, &c., because he derives no title under them, nor comes in with their assent or concurrence; for they have nothing to do with the collation of any person, but the bishop does it absolutely, and in virtue of his own power as patron and ordinary; and therefore if such leases want his confirmation, those who come under him may avoid them, notwithstanding any confirmation of the dean and chapter, under whom they derive no title: but because such advowson or right of collation is also parcel of the possessions of the bishoprick, and to bind the succeeding *bishop*, the confirmation of the dean and chapter is requisite; as in all other cases where the bishop, who is a sole corporation, makes any disposition of the possessions of his bishoprick: therefore without such confirmation of the dean and chapter, the succeeding bishop, or his incumbent, shall avoid such lease. But here another diversity arises between the translation, resignation, or deprivation of the bishop, and his death. In the first case it is held, that the leases confirmed by him alone, without the confirmation of the dean and chapter, will bind the succeeding bishop, and his incumbent, during his life; but in case of such bishop's death, such leases so confirmed by him alone, as patron and ordinary, will not bind the succeeding bishop or his incumbent: and a diversity is taken where a bishop, &c. makes any estate, lease, grant of a rent-charge, warranty, or any other act which may tend to the diminution of the revenues, which should maintain the successor, there, the resignation, deprivation, or translation of the bishop, &c. is all one with his death; but where the bishop is patron and ordinary, and confirmeth a lease made by the parson without the dean and chapter, and after the parson dieth, and the bishop collateth another, and then is deprived, translated, or resigns, yet his confirmation remaineth good; for, says my lord *Coke*, the revenues that are to maintain the successor are not thereby diminished. But this seems a very precarious reason; and a better reason of the diversity seems to be this; that when the bishop, as patron and ordinary, has by deed under his hand and seal subscribed his confirmation of the lease, this ought to be binding upon him, at least during his own life; and therefore though he be afterwards translated, deprived, or resigns, yet, since these are either by his own immediate acts, or occasioned by his default, it is not reasonable they should be allowed to avoid or derogate from his own acts, which otherwise would have bound during his life; for the law never permits any to avoid or derogate from his own acts: but these reasons have no place after the bishop's death, for then his confirmation is at an end, and can be no longer binding on his successor, since he had no power to charge the possessions of the bishoprick any longer than during his own life, without concurrence and confirmation of the dean and chapter, who are by law substituted and appointed to that purpose.

Dyer, 106.
b. 221. b.
Plow. 528.
Bro. tit.
Leases, 64.
tit. Confirmation, 21. 30.

But yet it is most advisable to have the confirmation likewise of the dean and chapter upon such leases made, and in several books their confirmation is either pleaded or admitted, since without it the lease cannot bind any longer than during the bishop's life who so confirmed it.

In some cases the confirmation of the patron is necessary, and in some not: wherein this diversity is taken in the books, that such sole corporations, as have not the absolute fee and inheritance in them, as prebendaries, parsons, vicars, and such like, if they make any leases or estates, there, to bind their successors, the patron must confirm the same; but such sole corporations as have the whole estate and right in them, as bishops, abbots, &c., or such corporations aggregate as have the whole fee and inheritance in them, as dean and chapter, master, fellows, and scholars of any college, hospital, &c., these may make leases to bind their successors, without any confirmation of the patron or founder, though the bishop, abbot, dean, master, &c. were presentable; and the reason of this diversity appears in the nature of the right with which each is invested.

Roll. Abr.
481.
Dyer, 273.

But if a parsonage or vicarage be a donative, then the confirmation of the patron alone is sufficient to all leases, &c. made by the parson or vicar, and shall bind the successor without the confirmation of any other.

Co. Lit.
300. b.
Comp. Incumb. 372.

If there be a patron paramount, as well as an immediate patron, confirmation of the immediate patron, without the other's confirmation, is not good: as, if a parson be patron of the vicarage of the same church, and the vicar make a lease, confirmed by the parson and ordinary, this is not good without the confirmation of the patron of the rectory also, because both have an interest in the possessions of the vicarage.

2 Roll. Abr.
479.
Leigh and Hallier.
Cro. Eliz.
587.
Dr. Herbert and Munday.
Sid. 57.
Keb. 280.
Gie and Rider.

If the bishop of *A.* be patron of the church presentative of *B.*, which lies within his diocese, and this be the corps of a prebend in the church of *A.*, and the bishop of *A.* be also patron of the church of *C.*, which is also presentative, and lies in the diocese of the church of *D.*, and afterwards the church of *C.* be lawfully annexed and united by the assent of the bishops, deans, and chapters of both dioceses, to the said prebend of *B.*, and afterwards the bishop of *A.* collate *J. S.* to the said prebend, which now by the union consists of both churches, and instal him in the cathedral church of *A.*, and then the prebendary make a lease for years, which is confirmed by the bishop, dean, and chapter of *A.*, and not by the bishop of *B.*, yet this is a good confirmation; for by the union the bishop of *D.* hath annexed the church of *C.* to the prebend of *B.*, and so hath deprived himself of the power of confirmation as ordinary; for after the union, the prebendary is invested in both churches by his instalment, without any presentment, admission, institution, or induction to the church of *B.* or *C.*

Comp. Incumb. 370.

If the dean of any cathedral church make a lease or grant of any of his possessions, whereof he is sole seised, to bind his successors, and confirmation be necessary thereto; this must be confirmed by the bishop and chapter of the same church, and not by the king,

king, although he be the patron of such deanery ; because, as hath been said, the dean and chapter have the whole fee and inheritance in themselves, and then the patron's concurrence or confirmation is not necessary. But it seems to be a doubt, whether the confirmation of the bishop be necessary to such grant or lease ; and several books seem to hold, that the confirmation of the chapter alone, without the bishop, is sufficient to make good the dean's leases or grants that need confirmation. But yet it is laid down as a rule in the *Parson's Counsellor*, that the bishop's confirmation, as well as the chapter's, is necessary to all leases and grants made by the dean ; and what is said by *Fitz.* that the bishop and chapter are in law looked upon but as one body, seems also to favour this opinion ; for it is reasonable that the whole body should consent to the granting of their possessions, and not that the bishop, who is the head of the body, should be unconcerned therein : also, the possessions of the dean are said to be derived from and carved out of the bishoprick, and the bishop *de jure*, is said to be patron of the deanery, which are all strong arguments to prove the bishop's confirmation necessary, though no book case can be found expressly to warrant it, but rather the contrary, as appears by the cases first cited, wherein no notice is taken of the bishop's confirmation, or that it was necessary ; *ideo quære ?*

Dyer, 40. b.
273. a. b.
349. pl. 18.
Plow. 538.
Roll. Abr.
478. 481.
Degg. 129.
F.N.B. 194.

3 Co. 75. b.
17 E. 3. 40.
Regist. Orig.
230.

But if such deanery be merely donative, then the king's consent and confirmation, as patron, must be obtained, and that without the bishop's confirmation is sufficient, as in all other donatives, wherewith the bishop has nothing to do.

Comp. Incumb. 371.

The dean of *Wells* might anciently have passed his possessions belonging to his deanery, with the assent of the chapter, without the bishop's confirmation ; afterwards, the deanery was surrendered by the dean thereof, with all the possessions thereunto belonging, and so dissolved by act of parliament ; the dissolution was confirmed, and a new deanery erected, and the nomination of a new dean, and his successors, given by the act to the king and his successors ; and it was thereby also enacted, that the dean and his successors might demise, grant, or part with any of their possessions, in the same manner and form as the ancient deans might and used to do : in this case, if the new dean make any lease or grant of any of his possessions, the bishop's confirmation was not necessary thereto, but only the chapter's, because that alone was sufficient before ; neither is the confirmation of the king requisite, because this is not a mere donative of the king, though he hath the nomination of the dean ; and by the statute the new deanery is made of the same nature as the old one was, which could not be a donative, because the dean and chapter might, without the consent or confirmation of any others, have passed away their possessions.

Dyer, 173.
Waltround
and Pallard.
Roll. Abr.
478. 481.

It has already been shewn, that all leases or grants made by archbishops or bishops, whereto confirmation is necessary, are to be confirmed by the dean and chapter ; for the law, not thinking fit to trust the bishop alone with the disposition of his possessions to bind his successors, did for that reason (amongst others) consti-

3 Co. 75.
10 Co. 60. a.
2 Co. 39.
6 Co. 34. b.

tute the dean and chapter to give their consent and confirmation to all leases or grants made by him for that purpose.

Dyer, 58. a.
b. 282. b.
Noy, 94.
Co. Lit. 301.
Roll. Abr.
477.
Leon. 234.
50 E. 3.
Statham,
tit. Affise,
Bishop of
Litchfield
and Coven-
try's case.
12 Co. 71.
Latch, 237.

But if a bishop hath two chapters, and makes a lease of any of the possessions of the bishoprick, whereto confirmation is necessary, and this is confirmed only by one dean and chapter, this will not bind the successor of the bishop; for both are but one in respect of the bishop, if the bishop is chosen by both. So it is, if a bishop be patron of an advowson in right of his bishoprick, and collate a clerk, who makes a lease for years, and the bishop and one dean and chapter only confirm it; this will not bind the succeeding clerk of the succeeding bishop, for want of confirmation by the other dean and chapter. But though both deans and chapters have used to confirm such leases, yet if one dean and chapter have surrendered their possessions to the king, and then the bishop or his clerk make a lease, whereto confirmation is necessary, and this is confirmed by the remaining dean and chapter only; this is good, and shall bind the successor; because by the surrender the one dean and chapter is dissolved, and are as if they never had been: and although after such surrender, the dean and chapter, who so surrendered, were again erected, yet confirmation by the other would be sufficient; as was held by the greater part of the justices in *Ireland*, and by five justices in *England*, who certified their opinion to be so into *Ireland*.

12 Co. 71.

If two bishopricks, that were originally distinct, are by lawful authority united, and the usage hath been since the union, that the several deans and chapters have made confirmations severally, viz. each dean and chapter of the leases or grants of the possessions of their respective bishoprick, but the charter of union is not extant, or cannot be found; such several confirmation is good; because it shall be intended, by reason of the usage, that the union was made spiritually, and in such a manner, that, notwithstanding the same, all leases and grants should severally be confirmed as they were before the union; and this, either to prevent confusion, or by reason of the remoteness of the several deaneries; and then *modus & conventio vincunt legem*, and such confirmation by the dean and chapter, of their own original possessions, is good. *Secus*, if the union were made generally, for then both ought to confirm.

Dav. 1.
Roll. Abr.
477.

If a bishop hath no dean and chapter, then his grants are to be confirmed by the clergy of his diocese, where confirmation is necessary; for the law will not trust any sole corporation with the disposition of his possessions, as hath been before observed.

Comp. In-
cumb. 367.

Whenever a dean and chapter are to confirm any lease or grant, the dean himself must join with the chapter, and confirmation by his subdean, deputy, or proctor, will not be sufficient: for they have no power to charge the possessions of the church, neither is any stranger capable of being a dean-substitute or proctor, but only one of the chapter.

11 H. 4. 84.
Bro. tit. Sor-
poration, 17.
Dav. 47.
Paim. 461.
Latch. 237.

Therefore, where upon a composition for tithes a parson granted an annuity to the abbey of *Battel*, and this grant was confirmed by the bishop, dean, and chapter, being patrons; but in the deed of confirmation it appeared that the dean was absent, and did not
put

put his seal thereto, but that the chanter, who was his commissary, did it for him; it was held, that though the dean might have a commissary or deputy to exercise his spiritual jurisdiction, yet that such deputy or commissary cannot charge the possessions of the church.

A lease was made by the free chapel and college of *Windfor* under the common seal, but the dean or warden himself was not party to the lease, but one who was his deputy in his absence; and upon a suit in Chancery, to set aside the lease, a statute of the college was shewn for the authority of the deputy to exercise and perform the office of dean in all things *in person*. & *collegium*, &c. yet the judges held, that the confirmation by the deputy was not good, for that he had no authority to confirm this lease by the college statute provided; for that by the word *collegium*, all the possessions of the college were not to be understood, but only the site and circuit of the college, or place of its situation. Which case seems to prove, that if by the statutes of a church or college, the deputy-dean may confirm grants and join in the making of leases, as if the dean himself was present and joined therein, that then such confirmation will be good; for the founder or patron may make what law he pleases for the regulation of the corporation, and when he has invested the deputy-dean with such power, this has the same sanction with any other laws for the regulation of that corporation.

As a deputy-dean, generally speaking, cannot confirm leases, so neither can he who is but a mere commendatory dean, *viz.* a dean by *recipere in commendam*; for though he may take the profits, because that was one end of his having the deanery *in commendam*, and may, with the chapter, choose a bishop, and also exercise spiritual jurisdiction; and sue or be sued by that name, because those acts are of necessity, and for the advantage of the deanery; yet cannot he confirm leases, for this is merely a voluntary act, and such commendatory dean is but *depositarius*, and not a dean complete. But if a dean be elected bishop, and before his consecration obtain a dispensation to hold his deanery *in commendam*, such dean may well confirm leases, &c. and if he be translated to another bishoprick, and after his election, and before consecration, obtain a dispensation to hold the same deanery *in commendam* with his second bishoprick, his old title remains; and confirmations, and other acts done by him as dean, are as good in law as if he had never been made bishop: for there is a great difference between a *recipere in commendam*, and *retinere in commendam*; the one comes in purely by virtue of the dispensation, and has no other title; the other comes in, legally at first as dean, and by virtue of the dispensation is only enabled to continue so still; for that gives him no original new title, as in the other case, and therefore he is as much dean as he was before. And the same distinction holds between *recipere* and *retinere in commendam*, in case of bishops; for a mere commendatory bishop in the *recipere* cannot confirm leases, &c. but in such case the archbishop is to do it. Also, the guardian of the spiritualities cannot confirm

Dyer, 233. b.
Comp. In-
cumb. 308.
Latch. 251.
Palm. 480.

Noy, 94.
Palm. 460.
480.
Latch. 237.
250.
Jon. 152.
&c.

firm leases; for such confirmation, being a mere voluntary act, and being to transfer a right to another, none are capable of it but those who have the estate and right in themselves, which such commendators in the *recipere*, substitutes, rectors, deputies, and guardians of the spiritualties have not.

Where there is a mere commendatory dean in the *recipere*; *Quare*, whether the bishop's leases and grants are not to be confirmed by the clergy of the diocese, in case where there is no dean and chapter, or by whom else?

Comp. Incumb. 368.

All leases or grants, which need confirmation of a dean and chapter, are to be confirmed by the dean and major part of the corporation, and being so confirmed are good, though several of the particular members dissent, or are not present; for the dean and major part of the chapter make the corporation, and the others have no negative voice to hinder such majority from doing any corporate act; for otherwise, by the corruption or perverseness of one or two members, the whole corporation might suffer; and that this was the law, appears by the following act of parliament:

33 H. 8.
c. 27.

" Albeit that by the common laws of this realm of *England*,
 " all assents, elections, grants, and leases, had, made, and granted,
 " ed, by the dean, warden, provost, master, president, or other
 " governor of any cathedral church, hospital, college, or other corporation, by whatsoever name they be incorporated or founded;
 " with the assent and consent of the more or greater part of their
 " chapter, fellows, or brethren of such corporation, having
 " voices of assent thereunto, be as good and effectual in the law,
 " to the grantees or lessees of the same, as if the residue of the
 " whole number of such chapter, fellows, and brethren of such
 " corporation, having voices of assent had thereunto consented
 " and agreed; yet the said common law notwithstanding, divers
 " founders of such deaneries, hospitals, colleges, and corporations within the said realm, have, upon the foundations
 " and establishment of the same deaneries, hospitals, colleges,
 " and other corporations, established and made, amongst other
 " their peculiar acts, local statutes, and ordinances, that if any
 " one of such corporation, having power and authority to assent
 " or dissent, should and would deny any such grant or grants,
 " that then no such lease, election, or grant, should be had, or leased,
 " or granted; and for the performance of the same have been, and
 " be daily thereunto sworn; and so the residue may not proceed
 " to the perfection of such elections, grants, and leases, according to the course of the common laws of this realm, unless
 " they should incur the danger of perjury; for the avoiding
 " whereof, and for the due execution of the common law universally within this realm, and every place, in one conformity
 " of reason to be used, be it ordained, established, and enacted, by
 " the authority of this present parliament, That all and every particular act, order, rule, and statute, heretofore made, or hereafter
 " to be made, by any founder or founders of any hospital, college, deanery, or corporation, at or upon the foundation of any
 " such hospital, college, deanery, or corporation, whereby the grant,
 " lease,

" lease, gift, or election, of the governor or ruler of such hospital, college, deanery, or corporation, as have or shall have voice or assent to the same, at the time of such grant, lease, gift, or election, hereafter to be made, should be in anywise hindered, or let, by any one or more, being the lesser number of such corporation, contrary to the form, order, and course of the common law of this realm of *England*, shall be from henceforth clearly frustrate, void, and of none effect, with an abrogation of all oaths heretofore taken to such effect, and a penalty of 5*l.* on any person who shall for the future give such oath."

When the dean and chapter are to confirm any lease, there ought not only to be a majority of them, but they ought also to be personally present, and *capitulariter congregati* in one place; which, with other circumstances relating to the manner of their confirmation, will appear by the following case, which was thus :

The bishop of *Fernes* makes a lease for years; the chapter, consisting of eleven persons, *viz.* the dean and ten prebendaries, confirm it in this manner, *viz.* The dean makes one *ƴ. S.*, a mere layman, his proctor or substitute, to give his assent to all leases or grants; this proctor, and three of the prebendaries only meet together, and fix the chapter seal to the confirmation of this lease, which confirmation was made in the name of the dean and chapter; after that, three others of the prebendaries, at several days, by themselves, subscribe their names to the said confirmation; and after the death of the bishop, his successor enters upon the lessee: it was adjudged lawful; for that the lease was void after the death of the bishop who made it, for want of confirmation; 1. Because no confirmation was made by the dean himself, but only by the proctor, which was not sufficient; for he was merely a stranger to the chapter, and not capable of such procuration; and therefore all he did was void both by the canon and common law; for in the canon law the rule is, *absens non potest demandare votum suum, nisi uni de capitulo*; and there is another rule, *oportet quod procurator semper institutus sit de collegio*; and another, *votum dari non potest per literas*: and agreeable to this is the rule of the common law; for in the parliament the peers may give their vote by procurator or proxy, but their proctors must be barons, and members of the same house; and a stranger is not capable of being a proxy; and admitting he were, yet where a corporation passes any interest, the members thereof cannot give their assent by proctors or substitutes; and so the doubt in *Dyer* seems to be resolved.

Dav. 42, 43.
&c. dean and
chapter of
Fernes's
case.
Dyer, 145.
Roll. Abr.
479.

Dyer, 145.

2. It was adjudged, that though the deed of a corporation needs no delivery, as the deed of a natural person does, but that the fixing of the corporation seal gives perfection to it, yet the major part of the corporation ought to be present when the seal is so affixed; for the major part of the chapter make the corporation, and their act is the act of the corporation, though the others do not agree; but here was only the proctor of the dean and three of the chapter present when the seal was affixed,

Dav. 47, 48.
&c.
2 Roll. Abr.
23.
Show. Par.
Cases, 29.

affixed, which is not sufficient; for there ought then to be a majority present, otherwise it may be said to be *cum assensu*, but not *consensu*, and it ought to be *cum assensu & consensu* of the dean and chapter: for as a body natural cannot do any perfect act, if it be dismembered, the head in one place, and the hands in another; so neither can a body politick: and therefore they ought to be *capitulariter congregati* in a certain place. But it was agreed, that they are not confined to meet in their chapter-house, but may meet at any other place: but at such meeting and sealing there ought to be a majority then present; for if they set their names at several times, and in several places, after, this makes it not to be the act of the corporation, but *factum singulorum* in their singular and private capacity, and so shall not bind. It was also held, that the major part of the members being assembled, ought to give their voices and consents singly and distinctly, as in the choice of knights of the shire, and not in a confused and uncertain manner; and when the major part so consent, their consent ought to be expressed by their fixing of the seal to the deed of confirmation or other grant.

Dyer, 282.
b. in mar-
gin.

The corporation of the mayor, bailiffs, and burgessees of *Wind-
sor* made a lease for years, one bailiff only assenting; and this was held a void lease, if there were two bailiffs; but as to the burgessees, it was held, that if the greater part of them assented, this would be sufficient, though they were not present at the sealing, if their assent was had before: but *quære*; for the foregoing case seems to be an authority that there must be a majority present at the time of the sealing; for that is the act which expresses their consent; and unless there be a majority then present, no assent at any other time can make that good, which, for want of a majority, was void when it was done. But in that case it appears, that the consent of the majority was not had till after the sealing; whereas in this case the consent of the majority was before the sealing, though such majority was not present at the sealing; and therefore *quære*, if this makes any difference?

Dyer, 40.
Chafin's
case.
Plow. 199.
Roll. Abr.
478.
3 H. 7. 7, 8.
2 Leon, 176.
4 Leon, 11.
Clerk's case.
Bro. tit.
Confirma-
tion, 30. tit.
Fairs (45).
Co. Lit.
300, 346.
Godb. 210.
Ireland and
Barker.

But here a material difference is to be observed between a real interest and a bare authority or power only, as to the manner of concurring in such leases. For if a dean be seized of lands in right of him and his chapter, or master or warden of an hospital or college in right of himself and the brothers and sisters or fellows of the same college, or a mayor in right of himself and the commonalty, and the dean, master, warden, or mayor, make a lease by indenture between the dean and chapter, master or warden, and the brothers and sisters or fellows of the same hospital or college, or between the mayor and commonalty of the one part, and *J. S.* of the other, whereby the dean with the assent and consent of the chapter, or the master with the assent of the brothers and sisters, or the warden with the assent of the fellows and scholars, or the mayor with the assent of the commonalty, lease such lands to *J. S.*, and with such assent or consent put thereto their common seal; this is a void lease; for the chapter, brothers and sisters, fellows and scholars, or commonalty, are equally

equally seised, and have an equal right and interest in the lands with the dean, master, warden, or mayor, and therefore ought to join in the leasing or granting part of the deed, and not only to give their assent, for they all make but one person in law; and a body cannot be distinct, so as that one part may assent to the acts of the other. But if the dean were sole seised of the lands in right of his deanery, the master or warden in right of their master or wardenship, or the mayor in right of his mayoralty, then the lease of the dean, master, warden, or mayor alone, with the assent and consent of the other persons before-mentioned, is sufficient; because the dean, master, warden, or mayor only are seised and have a real interest, and the other persons before-mentioned have no interest at all, but only a bare right or power of assenting to the leases or grants of their respective heads, and therefore their assent or consent is sufficient, without joining in the leasing or granting part. So, if an abbot or prior be seised of lands in right of the abbey or priory, yet, because the monks are all dead persons in law, and not capable of having any lands, of being empleaded, and such like acts; therefore, though they, together with the abbot or prior, constitute and make up but one body, yet the abbot or prior only have the power of leasing, and the assent or consent of the convent must be had and expressed by affixing their common seal, in the same manner as where the chapter, having no interest in their own right, are to assent to the leases of their dean. So likewise, where a parson makes a lease for years, he only is to grant or lease the lands, and the patron and ordinary are only to give their consent by affixing their respective seals, and expressing their consent or assent in the body of the deed; for the parson is the principal grantor, and the others have not any real interest in the lands, though the law has thought fit to require their assent to all leases or estates to be made by the parson.

A dean, seised of lands in right of him and his chapter, made a lease for years; the chapter confirmed this lease by a distinct deed; and it was held not good, because their deeds being severed cannot operate at all, since they are but one entire body, and therefore cannot sever in their acts. But if after such lease they had all joined in a confirmation, this had amounted to a new lease, and been good as to the joint act of them all, as the original lease itself would have been, if all had joined in the leasing part.

Dyer, 40. b. in margia.

A lease for years was made in this manner; *propositus, socii & scholares Collegii Reginalis in Oxonia*, guardianus *hospitalis, &c.* and exception taken, that it ought to have been *guardiani*, in the plural number, for the college consists of many persons, and each of them is capable, and therefore not like an abbot or convent: but *per curiam* it was held good, for the college is but one body, and as one person, and therefore *guardianus* is sufficient to describe it by.

1 Leon. 134.
4 Leon. 85.
Provost of
Queen's
College,
Oxon.

As a patron may confirm explicitly by his deed or writing, so may he also confirm by consequence of law: for if a parson makes

5 Co. 15.
Newcomb's
case. Cro.

Car. 38.
Roll, Rep.
361.
Co. Lit.
301.
Roll. Abr.
482.

makes a lease for years to the patron, who grants or assigns it over to another, this amounts to a confirmation in law by the patron, because confirmation being nothing but an assent under the hand and seal of the party confirming, such assent in this case sufficiently appears by his assigning over the lease to another. But without such assignment, the ordinary's confirmation will not make good the lease to the patron to bind the successor, because in the acceptance of the lease the patron was only passive, and executed nothing under his hand and seal which could amount to a confirmation, as in the other case, where he makes an actual assignment over. But in case of such confirmation in law, the patron ought to be absolutely seised of the advowson; otherwise it will bind only according to the estate he hath therein, as will appear hereafter. But *quare*, if the assignment in this case were without writing, if that would be good, or could amount to a confirmation?

Dyer, 52.
338.
Cro. Eliz.
447. 472.
5 Co. 81.
Co. Lit.
297.
Moor, 479.
481.
Co. Lit.
300.
Bendl. 238.
And. 47.
Hetley, 75.

Another difference observable in the manner of confirming such leases as we are treating of is, as to their duration or continuance. For if a parson makes a lease for twenty-one years at this day, and the patron and ordinary confirm his estate therein for seven years, or, reciting the lease, confirm *dimissionem predict.*, & *etiam indenturam eidem scripto confirmationis annexam*, & *omnia in eadem content.*, *quoad septem annos solummodo*, & *non ultra*, yet is the estate or lease well confirmed for the twenty-one years; for when they confirm the estate of the lessee, that is entire, and cannot be divided. So, where a prebendary made a lease of a rectory, parcel of his prebend, for seventy years, before the statutes, and the bishop, reciting the demise, confirmed the *said demise or lease* for fifty years, and no more, and the dean and chapter likewise confirmed the same in the same manner, it was held by all the justices, that they might confirm severally, and that their confirmation was extendible to the whole seventy years; for when they confirm *dimissionem predict.*, they confirm that demise or lease, which comprehends and includes the whole term of seventy years, and then the words *pro termino* fifty only, & *non ultra*, come too late, and are repugnant to the confirmation of *dimissionem predict.*, which included the whole term of seventy years. But it was agreed, that if after such recital of the demise they had confirmed the *land* to the lessee for fifty years only, this had been a good confirmation for fifty years only, and no such repugnancy in the confirmation: and so, if the demise had been of thirty acres, they might have confirmed the lease as to one or more acres, or might have confirmed all, or part, on condition. And a diversity was taken between a bare assent without any right or interest, and an assent coupled with a right or interest; for the termor, who is to perfect an act by his attornment, cannot assent for a time, nor upon condition, nor for part of the thing granted, but it shall enure absolutely to all, because he having but a bare right cannot qualify or apportion it; but the bishop, who is patron, and the dean and chapter, have an interest in the parsonage or prebend, and every part of it; for the patron hath *jus conferendi*; and

Cro. Eliz.
79.
21 H. 7. 41.
F.N.B. 49.
Co. Lit.
343. b.

and a release to the patron of an annuity in the time of vacation is good, and the patron and ordinary may charge the glebe in the time of vacation, and therefore having an assent clothed with an interest may qualify it as they please. Another difference was taken in the cases before-mentioned between a lease for years and an estate of freehold or inheritance. For if a parson or prebendary make a lease for years, confirmation may be made of the *land*, as has been said, for a less number of *years*, or of the *lease* for a less number of *acres*; for the years or acres are several, although the lease or term, or land are one; so that if a lease be made for five years, rendering 20*l. per annum* rent, the years are several, so that an action of debt will lie for the rent every year. But if a parson or prebendary before the statutes had made a lease for life, a gift in tail, or a feoffment in fee, and confirmation had been made of the *land* to the lessee, donee, or feoffee for an hour, this would be good for ever; for the freehold or inheritance passing by one and the same livery, is entire, and then the confirmation, which is an act of less notoriety, cannot break or divide it; for such confirmation being an assent to an act which passed the whole, must extend to the whole which passed by the act.

3. What Estates they who make such Confirmation are to have.

As to the estate they who make such confirmation ought to have, to make the lease effectually binding upon the successors, this regards chiefly the patron, whose advowson or right of patronage, being a temporal inheritance, and considered as such, is to be governed by the same rules as other temporal inheritances are; and therefore his confirmation, being in nature of a charge upon the advowson, is to be directed by the estate which he hath in the advowson, and can continue no longer than that endures.

Comp. Incumb. 372.

Therefore, if the patron be but tenant in tail, or tenant for life, his confirmation shall bind only such incumbents as come into the church during his own life: and accordingly it was agreed, by *Coke* and *Dodderidge*, that if a parson makes a lease for years, which is confirmed by the patron and ordinary, the patron being tenant in tail, and the patron and parson both die, and the issue in tail doth present another, his presentee shall hold the rectory discharged of such lease. And also they agreed, that although the issue in tail, after a presentation, levies a fine, yet the presentee of the conusee, when the church becomes void again, shall hold it discharged; because the confirmation was defeated by the presentation of the issue in tail before the fine levied. But if the patron, tenant in tail, discontinues the estate-tail, the lease confirmed by him shall stand good during the discontinuance: or if the estate-tail be barred, it shall stand good for the whole term: for now the estate of the patron, in respect whereof the estate was only voidable by the presentee of the issue in tail, is become an absolute and unavoidable fee.

Co. Lit. 300.
Roll. Abr. 480.
Roll. Rep. 361.
Bridg. 95.
Leon. 234.

So, if the patron had a conditional estate in the advowson, and he confirms a lease of the parson's, and after the condition is broken,

Co. Lit. 300. b.

broken, this defeats also his confirmation, so that the succeeding incumbent shall not be bound by it; for his confirmation, which was in virtue of, and derived out of his estate in the advowson, could not be more lasting than that estate itself was.

Dyer, 252.
Roll. Abr.
42a.

If the chaplain of a chantry or free chapel, that was a donative, had made a lease for years before the dissolution of chantries, and the patron of the chapel, being seised of the patronage in tail, had confirmed it, this should not have bound the chaplain of the issue in tail; because the tenant in tail could not, by any act of his, bind the issue in tail after his death: and in such case, if the patronage of the donative came to the king, by the statute of chantries, neither the king, nor his clerk, should be bound by the said lease. But if the donor had levied a fine after the confirmation, by which the issue in tail was bound from avoiding the lease, the king also should be barred: and as the issue in the other case would not have been bound, no more would the king, who comes in subject to all the advantages or disadvantages the issue in tail was capable of, or liable to.

Roll. Abr.
242.

If tenant in tail of an advowson, and the son and heir apparent, join in a grant of the next avoidance, and after the tenant in tail dies, the son shall avoid the grant, because he hath nothing in the advowson at the time of the grant made.

Dyer, 72. b.
in margin.
Leon. 234.
Lancaster v.
Lucas.

If a parson make a lease for years, and there be three coparceners or tenants in common, who are patrons, all ought to join in the confirmation, else it will not bind the next incumbent; because they are all but one patron; *per Coke*: but if there be a composition to present by turns, *quare*, if a lease confirmed by him, that hath the next turn when the church voids, shall not be good to bind his presentee? But in the first case [*viz.* the case in Dyer] it is held, that if one of the patrons, and the ordinary, confirm the lease, and the parson dies, and then the ordinary collates by lapse, this confirmation by the one patron is good, and that the collatee shall not avoid it; and this is said there to be adjudged upon long and good argument, and the case cited for it is *Lancaster* and *Lucas*; which does not appear to be adjudged in *Leonard*, but is there said to be adjourned? *ergo quare causam*; for the ordinary hath no interest, but presents in right of the patron, and therefore his clerk shall be so far bound, and no farther, than the clerk of him who suffered the lapse should have been. But *Popham* argued, that this title of lapse was an interest in the ordinary, and not an authority only, and then all who come in under that interest shall be bound by the ordinary's confirmation of the first lease: and he said, that at the beginning, the patron was not restrained to any time to present his clerk, but the six months were appointed, at the instance and suit of the ordinaries, by a canon confirmed in the council of *Lateran*; before which time the ordinaries had not any lapses; but after the said canon they had an interest, which the civilians call *interesse caducum & conditionale*; and it is such an interest, that if the bishop dieth before collation or presentment, so as the temporalities come to the king, the king shall present. *Quere* of this?

If the husband and wife, patrons of a church in right of the wife, confirm a lease made by the patron, yet this shall not bind the presentee of the wife, if she survives her husband, nor her heirs, nor their presentees, after her death; because the deed was void *quoad* the wife, being a feme covert, and the husband had nothing but in her right, which died with him.

Dyer, 133. a.
Roll. Abr.
479.

Though he who confirms as patron hath a fee-simple of the advowson in him, yet if, before he confirms, he hath granted away the next avoidance, his confirmation of the presentee's lease will not be good to bind the presentee of the grantee of the next avoidance, unless such grantee doth also confirm; and if the presentee of him that hath the next turn doth enter and avoid such lease (as he well may) and then dies, and the patron of the fee presents a new incumbent, who is admitted, instituted, and inducted, this new incumbent shall hold the benefice discharged of the lease, as his predecessor should have done, though he came in by the presentation and admission of the patron and ordinary, who confirmed the lease. So, if the bishop were patron in right of his bishoprick, and after such lease made by the parson, the bishop, dean, and chapter had granted the next avoidance to another, and then after they had all confirmed the lease; yet upon the incumbent's death, if the grantee of the next avoidance presents, and the clerk is admitted, instituted, and inducted, and avoids the lease, it shall never take place against any subsequent incumbent, though he come in by the same patron who confirmed such lease. The reason of these cases is, because the grantee of the next avoidance, and his presentee, come in by title paramount the making or perfecting of such lease; and the presentee, or parson, having the whole fee in him, when he had once defeated the lease, it shall never after revive or take place against any subsequent incumbent. And though *Littleton* seems to be of opinion, that the parson hath not the right of the fee-simple in him, yet he explains himself to mean as to the bringing of a writ of right; for otherwise it is the act of the parson which charges or gives, and the patron and ordinary only assent, and then the lease being avoided by him who hath the fee-simple of that land which was so leased, it can never after be set up again, being totally defeated by his title paramount. Another reason may be, that having granted the next avoidance before such lease made or perfected, the grantee is now become the present patron, and ought to concur in all acts whereby the possession is to be charged: for as before such grant, the patron's confirmation, who had the whole fee in him, would have been sufficient; so now, having granted away part of that fee, the grantee ought to join likewise, so that the confirmation may be by all who have any interest in the parsonage, as well those who have the present and possessionary interest, as those who have the future and reversionary interest; since otherwise the confirmation is not complete, and the lease is then liable to avoidance for want thereof.

Moor, 67.
481.
Dyer, 72. b.
133. a.
Cro. Car.
582.
Jon. 454.
Roll. Abr.
480.
Co. Lit.
46. a.
7 Co. 36a.
Hob. 7.

If a church be full of a parson, and after another be made parson and inducted, and he make a lease for years, which is confirmed

Roll. Abr.
477.
9 H. 6. 34.

firmed by the patron and ordinary, yet the lease is void ; because he who made it was not parson, the church being full before.

Roll. Abr.

477.

9 H. 6. 34.

20 H. 6. 11.

Degg. 120.

So, if a church be void, and one enter and occupy of his own wrong, without any presentation or institution, and occupy as parson, and make a lease for years, which is confirmed by the patron and ordinary ; yet this is void, because the lessor was no incumbent ; for none can be parson or incumbent without presentation or collation. So, a lease by a parson, vicar, prebendary, &c. before induction or instalment, though confirmed, shall not bind the successor, because till then they have nothing in the temporal possessions.

9 H. 6. 33.

34.

Roll. Abr.

480.

But if a church be void, and one present by usurpation, and the incumbent of the usurper, after admission, institution, and induction, make a lease for years, which is confirmed by the usurper as patron, and by the ordinary, and after, in a *quare impedit*, the true patron recover, and remove the incumbent ; yet it seems the lease shall stand, because there was a patron *de facto*, who made and confirmed such lease ; and the parson coming in by all the solemnities of law when the church was void, the people could take notice of no other, and therefore all acts done by him, and legally confirmed, are good. But *Rolle* cites this case, that the successor of the rightful patron, after recovery, shall avoid such lease, because it was not made or confirmed by a rightful parson or patron ; *ideo quare ?*

Dyer, 244.

Plow. 400.

Co. Lit.

352.

Co. 155. a.

10 Co. 48. a

King Ed. 6. being patron of a church full of an incumbent, by his letters patent grants the advowson to the bishop of *Coventry and Litchfield* and his successors, and grants that, after the avoidance of the church by death, resignation, or otherwise, the said bishop, and his successors, should hold the said church *in propriis usus* ; the bishop after, by indenture, makes a lease for forty years, to begin at such a time as the said parsonage should come to the hands of him, or his successors, by death, resignation, or otherwise ; and this is confirmed by the dean and chapter ; the bishop dies ; then the incumbent dies ; and the successor of the bishop enters, and makes a lease for twenty-one years, &c. And by the justices it was held, that the first lease was absolutely void ; for the lessor had nothing in the parsonage impropriate during the life of the incumbent, and he survived the lessor, and therefore he could never take effect : and it could not be good by estoppel ; because the truth of the case appeared in the indenture of lease itself, that he had nothing during the incumbent's life. This case further proves, that the whole fee is in the present incumbent ; and, as in the cases before-mentioned, the avoidance of a lease by the present incumbent shall be an avoidance of it for ever ; so in this case, for want of the present incumbent's joining, the lease shall never arise.

4. At what Time such Confirmation is to be made.

Co. Lit.

300. b.

As to the time of confirmation, generally speaking, it is not material, whether it be before or after the making of the lease, which

which is to be so confirmed, so it be made in the lifetime of the parties who make the lease; for the confirmation is but an assent or agreement by deed to the making such lease or grant, and not a confirmation of the estate itself, as will appear more fully by the following cases and diversities.

If a disseisor makes a charter of feoffment to *A.* with a letter of attorney to deliver seisin, and, before seisin given, the disseisee confirms the estate of *A.*, or the deed made to *A.*, this is clearly void, though livery be made after; for this must enure as a confirmation of the estate, which cannot be good before the estate passed, as before livery it did not. But if a bishop had made a charter of feoffment before the statutes with a letter of attorney, and the dean and chapter, before livery, confirm the deed, this is a good confirmation, and livery made after is sufficient. So, if the bishop had granted a reversion, the dean and chapter might confirm the deed or grant before attornment.

So, if a bishop at the common law had granted lands by deed to the king, and, before enrolment, the dean and chapter, by their deed, confirm the deed of the bishop, and after the deed of the bishop is enrolled, this is a good grant and confirmation; because, as to the bishop, it was a perfect deed, and therefore capable of being confirmed; though to enable the king to take, there wanted enrolment, which might be at any time after. The same law, if the bishop had made a lease for years to the king, confirmation of the lease before enrolment would be good.

So, if the patron and ordinary had by deed given licence to the parson to grant a rent-charge out of the glebe, and the parson had granted it accordingly, this was good, and should bind the successor, though it was not a confirmation subsequent, but a licence precedent.

So, if a bishop makes a lease for years at this day, which needs confirmation; and the lease is made on the second of *May*, and confirmed on the first of *May*, this is a good lease, by *Catlin* and *Southcot*; but *Wray* objected, that a lease cannot be confirmed before it be made; to which they replied, that the assent before was a good confirmation of the lease made after.

So, where a bishop made a lease the second of *May*, which was confirmed the third of *May*, and sealed the fourth of *May*; this was held a good confirmation.

So, where the deed of confirmation bore date before the deed confirmed, but by agreement the deed confirmed was first delivered, the confirmation was held good; for a confirmation is but a mere assent by deed to the grant, and therefore may be either before or after the grant or lease itself, or at the time of the lease or grant; as, if a parson makes a lease, with the assent of the patron and ordinary, this is a good confirmation; and so where the dean and chapter are to confirm likewise, if their respective seals are affixed.

And yet it hath been holden on the contrary; that if a confirmation be made and delivered before the grant or lease to be confirmed,

Co. Lit.
301. a.
3 Leon. 17.
4 Leon. 223.
Bishop of
Rochester's
case.

Co. Lit.
301. a.
Roll. Abr.
478.
Palm. 466.
Litch. 240.
Dimmock's
case.

Co. Lit.
300. b.
Roll. Abr.
480.
7 H. 4. 15.
Bro. Nov. Cases, 201.
Owen, 33.

1 H. 6. 8.
Roll. Abr.
480.
Dyer, 106.

Roll. Abr.
480.
8 H. 6. 6.

firmed, that this is not a good confirmation; and though, after the grant or lease, the deed of confirmation be delivered again, yet that will not make it good, for that it was a deed by the first delivery; and the second delivery will not make it good as an assent, because the assent ought to be by deed, and the first delivery was void. But that confirmation may be made before the grant or lease be confirmed, the other cases are express, and the reason of the thing seems likewise to make for it; for the confirmation being nothing but an assent or agreement that the bishop or parson may make such lease, &c. when this assent appears under seal, and a lease, &c. made pursuant to it, there can be no reason to impeach the lease after, which has all the sanction that the law requires viz. the concurrence and assent of the persons appointed by law to that purpose, and before or after are only circumstances of time, which seem not material when the assent, which is the substance, sufficiently appears.

Moor, 66.
pl. 280.

Therefore, if a bishop makes a lease for twenty-one years according to the statutes, and after makes a concurrent lease for years of the same land to another, and after, before any confirmation of the second lease, the bishop makes another concurrent lease to a third person, which is immediately confirmed, and after the second lease is confirmed also; in this case the second lease shall be good and effectual by the confirmation, although the last lease was confirmed before it, because the confirmation adds nothing to it, nor conveys any interest, but only makes it more perdurable and effectual.

5 Co. 15.
Newcomen's case.
Cro. Eliz. 18.
Higgins v.
Grant.
Cro. Car. 38.
Cro. Jac. 53.

And upon this reason it hath been adjudged, that leases made before 13 *Eliz. c. 10.* for more years than are allowed thereby, being confirmed after the said statute, are good, and shall bind the successor; for the confirmation is only an assent, and when it is made relates to the making of the lease, which being before the statute, remains at common law, and, by consequence, binds the successor: also, such confirmations being only to perfect leases made before that statute, are not within the intent thereof.

Cro. Eliz.
430.
Moor, pl.
636.
Sir Edward
Denny and
Eakinfall.

So, where an archdeacon, impropiator of a parsonage, 12 *Eliz.* let part of his glebe for fifty years, and the bishop, patron of the archdeaconry, and the dean and chapter, 15 *Eliz.* confirmed the lease, and then the archdeacon died; it was held, 1. That the statute 1 *Eliz. c. 19.* extended only to the immediate possessions of the bishoprick, and here the land let was not any part of the possessions of the bishoprick, but of the archdeaconry; and the confirmation, though it is necessary, yet at most it amounts only to an assent, and the interest passes from the archdeacon and not from the bishop. But if the bishop had been disseised of any of the possessions of the bishoprick, and after had confirmed the land to the disseisor, this would not bind his successors, because here the confirmation passed an interest, and without such confirmation the bishop himself might have entered and restored the possession, and no act of his singly can bind his successor. 2. It was adjudged that this confirmation, though after 13 *Eliz. c. 19.* should bind the archdeacon's

archdeacon's successor, because the lease to which it relates was made before the statute, and that statute restrains only from alienating, not from confirming.

But if a bishop, parson, or any other sole ecclesiastical corporation, makes a lease for years, which needs confirmation, this confirmation ought to be made in the life and during the incumbency of the lessor; for after his death, resignation, deprivation, or other amotion, the lease is become void for want of confirmation; and then confirmation made after cannot revive it, though it be made in the vacation before any successor comes in.

But if a parson makes a lease for years, which is not confirmed by the bishop or patron then in being, but by the succeeding bishop and succeeding patron, this is a good lease, and shall bind the successor, because the lease was absolutely good against the parson himself who made it, and the confirmation was only necessary to make it binding on the successor; and in this case, the lease being duly confirmed during the incumbency, had all the sanction the law requires; for there is no prefixed time for the confirmation of such leases, so it be made during the life and incumbency of the lessor.

5. How far a Regard is to be had to the true naming of the Corporation or Persons who confirm.

Herein we shall only observe, that corporations aggregate, as dean and chapter, mayor and commonalty, warden and fellows, &c. may make or confirm leases, without expressing either the christian or surname of the dean, mayor, warden, &c. because in their politick capacity, as a corporation aggregate, they continue always the same, and are said never to die: but in leases or confirmations by a bishop, dean, mayor, &c. or other sole corporation, both their christian and surname, or at least their christian name, ought to be expressed, because they are subject to death and succession, &c. and therefore must be particularly named to shew whose lease, &c. it was; and so some hold too in the first case.

(H) Of void or voidable Leases by Ecclesiastical Persons: And herein,

1. Against whom Leases not pursuant to the Statutes, or otherwise defective, are void or only voidable.

HERE it is to be observed, that if a bishop grants the next avoidance of a church, which is not warranted by 1 Eliz. c. 19. because it is a thing which lies merely in grant, out of which no rent can be reserved; or makes a lease of the advowson of a church; or grants an annuity out of the possessions of his bishoprick; or makes a lease of tithes for three lives, or a lease of any other of his possessions, not pursuant to all or any of the eight rules before-mentioned; yet in none of these cases is such lease or

Co. Lit.
301.
21 H. 7. 1.
Degg. 118.
4 Leon. 78.
In which
last book the
contrary is
held by Clench.

5 Co. 15.
Cro. Car.
38.

Bro. tit.
Leases 45.
Dyer, 83.
86. 106.
11 Co. 21.
Hob. 32.
Leon. 307.

Cro. Eliz.
440.
And. 241.
Sav. 119.
3 Co. 59.
Cro. Jac.
173.
2 Brownl.
164.
Cro. Eliz.
207. 690.

Hard. 326.
Co. Lit.
45. a.
10 Co. 59. b.
2 Leon. 138.
Leon. 308.
Roll. Rep.
169.
Keb. 182.
11 Co. 73.
8.

grant void or voidable by the bishop himself who made it, but remains good against him during such time as he continues bishop. But as to the successors of the bishop, such leases or grants are void or voidable, as the case happens to be, as will appear hereafter. And the reason such leases or grants are good against the bishop himself, who made them, is, because they were so at the common law, and the statutes were made only for the benefit of the successors, that they should not be bound by those acts of their predecessors, which might turn to their prejudice and disadvantage; but not to give the bishop himself power to avoid or derogate from his own acts, which would be against all rules both of law and equity, and therefore was not within the meaning of the said statutes; for then he would be empowered by act of parliament to do wrong to other persons, which it cannot be presumed the parliament intended to allow.

Roll. Rep.
151.

So, where a bishop, by deed enrolled, gave lands to the queen, without the consent of the dean and chapter, yet it was held, that this was good against the bishop himself who made such gift.

Brownl. 21.
Moor. 875.
2 Brownl.
134. 158.
3 Co. 60.
Leon. 308.
Co. Lit.
45. a.

So, for the reasons before-mentioned, though the 13 *Eliz. c. 10.* says, that all leases, gifts, grants, &c. made by any persons or corporations therein mentioned, contrary to the tenor of that act, shall be utterly void and of none effect to all intents, constructions, and purposes; yet it hath been adjudged, that a lease made by a dean and chapter against the said statute shall not be avoided, nor any covenants therein contained, during the life and continuance of the dean that made the lease; so that if they have made a lease for years of any of their possessions, and before the expiration thereof made a concurrent lease also for the same lands, and then make a third lease for lives, with express covenant, that the grantee for lives shall enjoy the land against the second or concurrent lease; and grantee for lives being in possession is evicted, and brings covenant against the dean and chapter; in this case, though the lease for lives be void by the 13 *Eliz. c. 10.* yet it was agreed by the justices, that because the dean who made the lease for three lives was living, and continued dean at the time of the eviction, the lease was not void, and, by consequence, an action was well maintainable against the dean for breach of the covenant therein contained.

11 Co. 67.
78. b.
Roll. Rep.
171.

So, where a master and fellows of a college, by deed enrolled, made a lease for years, not warranted by that statute, and afterwards suffered a fine, and five years to pass without claim; though this was void against the succeeding master, yet by construction the lease and fine were held good against the college, (though it be a corporation aggregate that never dies,) during the life of the master, who was party to the lease, and made no claim; because he was the head and principal part of the corporation.

Hetley, 24.
Co. Lit.
45. a.
Comp. Incumb. 380.

So, if a dean, archdeacon, prebendary, parson, or other sole corporation, make leases of their sole possessions, not warranted by the said statutes, yet they shall bind themselves during their whole

whole time, because the statutes were made to provide chiefly for the benefit of the successors, and not to relieve the parties themselves against their own acts or grants; though it was held by *Popham*, that if a parson made a lease without reserving any rent, that this should not bind even himself; but *quære?*

But where there is a chapter that hath no dean, as the chapter of the collegiate church of *Southwell*, there, grants or leases made by them contrary to 13 *Eliz. c. 10.* are void *ab initio* against themselves: and so, of leases or grants by any other corporation aggregate, who have no head or principal person; for they must be either void *ab initio*, or good for ever, because they continue always the same, and one has no superiority or power more than another: but in case of a dean and chapter, master and fellows, &c. though they are a corporation aggregate, and never die, yet leases or grants made by them, contrary to the said statutes, shall bind during the time of the dean, master, &c. who was party thereto, because such dean, master, &c. who are the head of the corporation, are subject to death and succession, as other sole corporations, and therefore shall have no aid from the statute to avoid their own leases; but only their successors, for whose benefit the statute was made, together with the chapter. But if the dean and chapter, master and fellows, &c. were all equally seised, and the dean and master solely should make a lease, though it were in all respects warranted by the statutes, yet this lease seems void *ab initio* at common law, because the dean, master, &c. had no sole seisin whereof to make any lease at all; but the chapter in the one case, and fellows in the other, having an equal estate and interest, ought to have joined in such lease or grant, and for want of their joining, such lease or grant seems void at common law, as it would be for a misnomer, &c. and then the lessee cannot hold it against the dean and chapter, if they seek to avoid it.

As leases and grants, not warranted by the statutes, are not void against the lessors and grantors themselves, so neither are leases or grants made without due confirmation, where confirmation is necessary, but only by the grantor's death or amotion.

If a bishop makes a defective or voidable lease or grant, not only the successor, but also the king, when the temporalities come into his hands, may take advantage thereof, by avoiding it during the vacancy of the bishoprick, in privity and right of the bishop. But this shall not so absolutely avoid the lease, but that the succeeding bishop may make the same either good or void, at his election, as to himself; and this either expressly, as by actual agreement to the lease or grant of his predecessor; or implicitly, as by acceptance of rent incurred after the death of his predecessor; or doing any other acts, which amount to an agreement in law. And therefore this differs from the cases before put, where avoidance of a lease by a parson shall avoid it, not only for his own time, but also against all his successors; so that they can never after set it up again, or affirm it by any act of theirs whatsoever: for the parson hath the whole fee-simple in him as much as any of his successors can ever have; and therefore when he once

Mod. 204.
2 Mod. 36.
Hard. 326.
Leon. 308.
3 Co. 60.
Co. Lit.
45. a. 325.
b. 341.

Dyer, 239.

7 Co. 7.
The Earl of
Bedford's
case.

avoids the lease, as to the whole fee-simple which he hath, he avoids it for ever, so that it can never after revive; but the king hath not the fee-simple in the temporalities, but only the custody or guardianship of them during the vacation of the bishoprick, which is but a temporary and qualified interest; and therefore what he does shall not be binding on the successor. But if the successor himself avoids such lease or grant, then it is the same with the other case, and no succeeding bishop after can revive or set it up again, because it was avoided by one who had the whole fee-simple and estate in him.

But here a difference is to be observed betwixt such leases as are actually void by the death, &c., of the lessor, and such as are only voidable. And here again we must distinguish; 1. Between the person leasing. 2. Between the things leased, and the leases themselves. And because the common law, with respect to these distinctions, holds good still, where the several statutes before-mentioned are not pursued, we shall consider how the common law stood in these particulars, which, together with the reasons thereof, will shew how the law is at this day upon the statutes.

The first distinction to be observed is between the persons leasing; that is, between such sole corporations as had the whole fee-simple absolutely in them, as bishops, abbots, &c., and such sole corporations as were looked upon only to have a qualified fee-simple, as parsons, vicars, prebendaries, provosts in cathedral churches, and others who were presentative or collative, and not elective.

As to leases by parsons, vicars, &c., if by the common law any of these had made a lease for years of any of the possessions of their church, without confirmation of patron and ordinary, &c., such leases by their death, or other avoidance, had become absolutely void without entry or other ceremony, so as no acceptance of the rent, or other act done by the successor, could affirm or make them good or binding over against themselves. But leases for years by bishops, abbots, &c., though without confirmation of the dean and chapter, or assent of the convent, were not absolutely determined by their death, &c., but continued good till some act done by the successor to avoid them: for they have, and always were allowed to have, the whole fee-simple and inheritance of their possessions in themselves; and therefore, before the third council of *Nice*, anno 710, might by their sole alienation, without the confirmation of the dean and chapter, have bound their successor for ever: and though by that council such alienations are restrained, as hurtful and injurious to the church, and the confirmation of the dean and chapter made necessary; yet this is only *quoad* binding the successor; for the fee-simple continues still in them; and therefore leases for years made by them subsist after their death or removal, as they would do, if they had been made by a tenant in fee of any lay possessions, till the successor comes to avoid them by aid of the canons made at that council, which have received a sanction from our law.

Bro. tit.
Acceptance,
9, 10. 26.
tit. Con-
firmation,
21. tit.
Dean, 20.
tit. Leases,
18, 19. 32,
33. 52.
F.N.B. 50.
Plow. 264.
Cro. Eliz.
18. Poph.
121. Dyer,
46. 231.
Co. Lit. 45.
b. 102. 341.
6 Co. 8. a.
Heil. 88.
Roll. Abr.
481. Roll.
Rep. 361.
Bridgm. 94.
1 Co. 65.
Raym. 166.
1 Keb. 325.

So, it was in case of abbots, priors, or deans, &c., where they were sole seised; if they had made a lease for years of any of their possessions, this had not absolutely determined by their death, &c., because they had the whole fee-simple in them; and therefore such leases continued good till the successor came to avoid them, for want of confirmation of the persons substituted by law for that purpose.

Vide the authorities supra.

Therefore, where a prebendary made a concurrent lease for years of tithes, rendering the ancient rent, without confirmation of the dean and chapter, it seems to be allowed, that this was not absolutely void by his death, &c., but only voidable; and then acceptance of the rent by the successor would make it good during his time: for leases not warranted by those statutes remain at common law, which makes them only voidable, not actually void upon the death, &c. of the person who makes them.

Hard. 136.
Sir John Thoroughgood and Sir Henry Herbert.

The second distinction to be observed is, between the things leased and the leases themselves.

It has been before observed, that leases for years by parsons and vicars determine absolutely by their death, without entry, or other ceremony; but if they make a lease for life or lives, and die, or are removed, yet the lease continues good till some act done by the successor to avoid it: the reason is, because such lease for life or lives being an estate of freehold, could not pass without the solemnity of livery and seisin; and therefore to defeat that, there must be an act of equal notoriety, viz. the entry of the successor; and by consequence, if the successor before such entry accepts the rent, or does any other act signifying his consent to such lease, this affirms the same during his time, so as he can never after avoid it, because it was only voidable, not actually void by the lessor's death, &c., and, consequently, capable of an affirmance. And the law is the same at this day, as to things which lie in livery.

Vide the books supra.

But as to things which lie in grant or prender, there seems a diversity between the common law and the law as it stands at this day upon the before-mentioned statutes: for if a bishop makes a lease for lives of a portion of tithes, or other things not manurable, reserving the ancient rent, and dies, &c., and his successor accepts the rent, yet this acceptance shall not bind him, because the lease was absolutely void by the bishop's death, &c., who made it without entry, or other ceremony. And the reason of its being so absolutely void is, because the things leased lying only in grant or prender, no rent could be thereout reserved, recoverable by the successor; for distrain he could not, because there was nothing wherein a distress might be taken; and an action of debt would not lie (a), because the lease being for lives, no action of debt was maintainable till after the lives ended; and therefore since his acceptance of the rent due at one day will not enable him to sue for it, if afterwards denied, he shall not be bound by such acceptance. But if the tithes, or other things lying in grant, had been let for years, there, the successor's acceptance of the rent would have bound him during his time, because, then, he might have an action of debt for any arrears that should incur after. And this construction

Cro. Jac. 173. Comp. Incumb. 380-1. Palm. 175. Degg. 134-318. Bro. tit. Leases, 41.

[(a) But by 5 Geo. 3. c. 17. Debt will now lie upon such leases for lives.]

Leases and Terms for Years.

construction seems to arise wholly from the statutes before-mentioned, which as appears before, were made wholly to provide for the successor, that he might not be impoverished or prejudiced by the acts of his predecessor: for at common law all leases for lives or years, as well of things which lay in grant as of things which lay in livery, were only voidable after the bishop's death, &c., not actually void: and herein the law at this day, as to bishops, appears to be the reverse of the common law as to parsons, vicars, &c., for as their leases for years were absolutely void by their death, &c., but their leases for life or lives only voidable; so here the bishops' leases for lives are absolutely void by their death, &c., whereas their leases for years are only voidable by their successor: but *quære*, whether the common law made any such distinction as to things in livery and things in grant, either in case of bishops, or parsons, vicars, &c.? for the only distinction taken notice of in the books is, between bishops, &c., who had the whole fee absolutely in them, and parsons, vicars, &c., who had only a qualified fee; and between leases for years by parsons, vicars, &c., and leases for life or lives made by them. But it seems clear, that if the law be so at this day as to bishops, when they make leases of things in grant, so it is as to all other ecclesiastical persons (except parsons, vicars, &c.), within the statutes before-mentioned, that leases for lives of things in grant determine absolutely by their death, for the reasons before given; but leases for years of such things in grant are only voidable by the successor, not absolutely void. But as to parsons, vicars, &c., leases for years made by them, whether of things in livery or things in grant, determine absolutely by their death, if not duly confirmed, or the statutes not pursued, because then they remain at common law, where their death or other amotion was an absolute determination of all leases for years in general made by them, and consequently, of leases for years of things in grant, as well as others. And this distinction in the principal case between leases for lives of things in grant, and leases for years thereof, by bishops and other ecclesiastical persons within the said statutes (except parsons, vicars, &c.), that in the one case, they are absolutely void by the death, &c., of the lessor, and in the other, only voidable, seems to be a reasonable distinction, and to reconcile all the books, which make it a great question, if leases in general by bishops, &c., not pursuant to the said statutes, are absolutely void by the death, &c. of the lessor, or only voidable. For if leases for years by them of things which lie in grant are only voidable, and not actually void, because the successor is not without some remedy for the rent, and therefore may adhere to that, if he pleases, and affirm the lease for his time; much less are leases for years or lives of things which lie in livery (though the statutes are not pursued), absolutely void by the death, &c. of the lessor, since in such cases the successor has as full and ample remedy for the rent by distress or otherwise, as he would have had if all the circumstances required by the statutes had been pursued; and then *quilibet potest renunciare juri pro se introducto*; and if the successor thinks fit to waive the defect of such circumstances, and abide

2 Roll. Rep.
161. Ed.
Coke's case.
Jon. 406.
Cro. Car. 95.
5 Co. 2.
10. Co. 60.
61. Cro.
Jac. 173.

abide by the lease, it would be unreasonable, and against the intent of the statutes, to put it out of his power so to do, by making the lease actually void, so as no acceptance of the rent, or other act done by him, could affirm it. But where his acceptance of the rent at one day will not help him to any remedy for it the next, there, it would be unreasonable that such an unwary act should strip him of the benefit intended for him by the said statute, and where he had no remedy for the rent, should have none for the land neither, and would totally frustrate the design and intent of the act, and tend to the impoverishment of most successors to ecclesiastical persons.

But this acceptance of rent (a), which shall affirm a voidable lease, must be by him who is perfect successor: therefore, where the successor of a bishop, before he had a restitution of the temporalities out of the king, accepted the rent reserved by his predecessor upon a voidable lease, it was held, that notwithstanding this acceptance, he might well enter and avoid the lease; because before such restitution he was not perfect successor; and then such acceptance of the rent shall not bind him, any more than if he had been a perfect stranger.

not a sufficient confirmation of a lease. It cannot be a confirmation, unless done with a knowledge of the title at the time; or, unless the remainder-man lies by, and suffers the tenant to lay out his money in improvements, in confidence of continuing tenant. *Per Lord Mansfield, Cowp. 483.*

Palm. 517. Bishop of Oxford's case.

[(a) Acceptance of rent alone, unaccompanied with any other circumstances, is

So, where a master of a college, or head of any corporation aggregate, accepts rent upon a voidable lease made by his predecessor, and the rest of the corporation, without authority in writing from the corporation to accept the same, this acceptance shall not affirm the lease during the life or continuance of such master or head who so accepted it; for the right being as much in the fellows, or other members of the college, as in the master, &c. himself, he cannot by any act of his own conclude or bind them from their entry upon any voidable lease. Besides, he himself, in their right, may enter to avoid such lease, notwithstanding his own acceptance of the rent.

11 Co. 79. 2. Roll. Rep. 172. Magdalen College's case.

If a bishop's bailiff, of his own head, and without any order from the bishop, receives rent upon a voidable lease made by the predecessor of the bishop, this shall not bind the bishop. But where a bishop made a lease for lives of certain lands, parcel of the manor of A., reserving rent, but not in all things pursuant to the statutes, and by consequence, voidable by the successor, and then the bishop died, and another was made, and the bailiff of the manor came to him, and shewed him in general, that there were certain rents in arrear of the said manor, and thereupon the bishop commanded him to receive the said rents, which he did accordingly, and, amongst the rest, the rent upon the said voidable lease, and after paid all the said rents to the bishop, without giving him notice particularly of that rent; this acceptance shall bind the bishop, because he ought to take notice what leases are made by his predecessor, and what rent he himself received; for, if he had no title, he ought not to have received the rent at all; if he had, he must

Roll. Abr. 474. Hetley, 24. Cro. Car. 95. Wheeler v. Danby.

must be supposed to know it; and then his acceptance of the rent shews his assent to the lease upon which it was reserved.

Poph. 121.
Leon. 309.

Also, it is to be observed, that so far as the lessor is bound by any void or voidable leases, so far also the lessee, his executors or assigns, whichsoever of them have the interest, are bound thereby, and no further: therefore, when the lease is not void without entry, if rent be in arrear after the death of the predecessor, the successor hath remedy to recover such arrears, if he chuses to affirm the lease; but if the lease be absolutely void, the successor hath no remedy at law for any rent incurred after the death of his predecessor.

Leon. 309.

So, the lessee of a voidable lease, after the death of the lessor, may maintain an action of trespass against any stranger, who shall enter or do any other act of trespass upon the land before the lease be actually avoided.

2. By what Means and in what Cases such voidable Leases may be made good.

Dyer, 239.
Fitz. tit.
Abbot, 9.
Bro. tit.
Acceptance, 15.

This in a great measure has been explained under the foregoing division: it remains only to shew, that, besides acceptance of the rent, there are other ways by which such voidable leases may be affirmed; as, by distraining for rent due at the death of the predecessor; or by bringing an action of waste against the lessee; or, in case the lease be for life or lives, by bringing an assise for the rent due after the death of the predecessor; or acceptance of fealty from the lessee: all these amount to an affirmance of such voidable leases, and make them good against the person who so affirms them, for his own time; because these acts shew a sufficient intent in the successor to continue and acquiesce in the leases made by his predecessor.

3. The Manner of avoiding such Leases as are only voidable.

Dyer, 222.
Ayer and
Ome. Sid. 7.
Young and
Wright.
Dyer, 28. a.
in margin.

This may be done either by entry, where the lease is of things corporeal and manurable; or by claim, where the lease is of things incorporeal: as, where a lease for years is made, rendering rent, upon condition to be void for non-payment; this lease shall not be void without a demand made of the rent: for if it were otherwise, it would be in the power of the lessee to make the lease void at any rent day he thought fit, and so to add the wrong of making the lease void to that of non-payment of the rent.

Moor, 52.
Dyer, 222.

And where an entry is to be made, this may be done either by the bailiff of the party that would enter, or by other persons deputed for that purpose: but a bailiff, merely in virtue of his office, cannot make an entry for his master without special warrant, because his office is to manage his master's lands, and to take the profits thereof to his master's use; but to gain new lands, which the master had not before, does not belong to his office as bailiff. Besides, an entry being a thing which the master may or may not make, his bailiff shall not determine his election therein.

Where

Where a corporation aggregate have title of entry to avoid a lease, they cannot command their bailiff to enter, unless it be by deed; for their parol command in such case is void, and the entry thereupon tortious, because as a body politick they are invisible, and incapable of acts as natural persons are: but yet, *per curiam*, if one distrains as bailiff to a corporation, though in truth he be not bailiff, yet he may make conufance as such, and if the corporation agree thereto, it is good without deed, because the command he had in such case is not traversable.

But a bishop may by parol command his servant to demand a rent or make an entry, and this is good; because as a sole corporation he is capable of the same acts as all natural persons are.

A dean and chapter made a lease for years, rendering rent, but for default of payment the lease to be void; the rent was in arrear, and not paid: then they made a new lease to another person, and affixed their seal to it in the chapter-house, before any entry made upon the first lessee, and at the same time made a letter of attorney to one to enter and make delivery of this lease upon the land, who accordingly did it. It was objected, that this second lease was void, because the deed being perfected as the deed of the corporation, by their affixing their seal to it, the delivery after by the attorney was void, it being perfect before; and the first perfection of it as a deed could not make it a good lease for years, because the first lessee was in possession, and they made no entry to avoid it. But it was held to be a good lease, and that there was no other means for a corporation to make a lease but this: and *Gawdy* said, it was not the deed or lease of the corporation till delivery, as of another person; and therefore, where it is said in *Davis* 44. to be agreed, that if a dean and chapter put their chapter seal to a deed, this is a perfect deed thereby, without any delivery; this must be understood when the dean and chapter are in possession, not when they are out of possession, or have only a right: and so the diversity appears to be taken upon the books; for otherwise the lease must be inevitably void in such case; for till it be sealed, the attorney cannot deliver it as the deed of the corporation; and if the sealing perfects it presently as their deed, so that it cannot be delivered after, then it is void for want of an entry, and so all ways the lease would be void; which would be a very unreasonable construction, when it may be so easily avoided. And in the latter books it is said, that though the putting of the seal of a corporation aggregate to a deed carries with it a delivery, yet the letter of attorney to deliver it upon the land suspends the operation of it as an escrow till entry, &c. But yet the corporation, if they think fit, may after the indenture of lease engrossed make a letter of attorney to another, to seal and deliver it as their deed or lease to the lessee upon the land, without first affixing their seal to it: and so it was done in the case of the warden and fellows of *All Souls College* in *Oxford*. But then, as it seems, the attorney must affix the corporation seal to it, and not any other seal. Yet in one book it is held *per curiam*, that a corporation aggregate, as there the president, fellows, and scholars of *St. John's College*

Roll. Abr.
514. b.
Dumper v.
Syme. Bro.
tit. Corpora-
tion, 9-
6 Co. 38.
4 Co. 119.

4 Leon. 181.
Wood v.
Chiver.

Cro. Eliz.
167.
2 Leon. 97.
Willis v.
Jermin.

Dav. 44.
1 Roll.
Abr. 23.
Flud and
Gregory.
Vent. 257.
3 Keb. 307.
Good v.
Asha.

Leon. 106.
Carter v.
Claypool.
Bulf. 119.
President,
&c. of St.
John's Col-
lege v. Lord
Norris.

College

College in Oxford, making a lease, are to subscribe and seal it, and then deliver it by their attorney, having a letter of attorney for it, and that they could not deliver it in any other manner; but whether the attorney might also affix their seal or not, is not mentioned in the case.

(I) Of Leases made by those who have but a particular Estate or Interest in the Lands leased: And herein,

1. Of Leases made by Tenant in Dower or Curtesy.

Bro. tit.
Accept-
ance, 14. 19.
Tit. Leases,
17. 19.
Plow. 30.
272. Cro.
Car. 398,
399.
Jon. 254.
Vaugh.
30-1.

AS to these, it will be sufficient to observe, that if tenant in dower or by the curtesy make a lease for years, reserving rent, and die, this lease is absolutely determined, so that no acceptance of the rent by the heir or those in reversion can make it good. For though their estate is *quodam modo* a continuance of the estate of the husband or wife, yet it is a continuance of it only for life, and they have no power to contract for, or intermeddle with the inheritance, and, consequently, their leases or charges fall off with the estate whereout they were derived, and the lessee is become tenant by sufferance by his continuance of possession after.

2. Of Leases made by Tenant for Life.

Poph 105.
Co. 147.
Anne May-
hew's case.
[(a) His
leases are
merely void
upon his
death, and
therefore
cannot be set
up against
the remain-
der-man by
his accept-
ance of rent,
and suffering
the tenant to
make im-
provements
after his in-
terest vests
in posses-
sion. Doe v.
Butcher,
Doug. 50.
But *qu.*
whether in
such case
equity would
not relieve?
Stiles v.
Cowper, 3 Atk. 692.]

Tenant for life can make no leases to continue longer than his own life (a). But if tenant for life makes a lease for twenty years generally, and after he in the reversion confirms that lease, and then the tenant for life dies; though this at first would have determined by the death of the lessor, yet the confirmation hath made it good and unavoidable for the whole term. But if the lease had been for twenty years, if the lessor tenant for life should so long live, there, if the reversioner had confirmed this lease, yet it would not prevent its voidance upon the death of the tenant for life. The diversity between which cases is this, that in the first case the lease being made generally for twenty years, nothing appears to the contrary but that it was a good lease for that time absolutely; for the death of the lessor, which would determine it sooner, does not appear in the lease itself: then when the reversioner, who alone could take advantage of that implied limitation, thinks fit to wave it, and confirms the lease, as it was made at first, for twenty years absolutely, this makes it *his own lease* for so much of the time as would have fallen into his reversion by the death of the tenant for life, before the twenty years run out: but in the other case, the death of the tenant for life being made the express limitation and circumscription of the twenty years in the lease itself, no confirmation of that lease, as so limited, can enlarge it to extend beyond the life of the lessor, that being the express determination affixed to it,

And

And yet we find one case where it is held, that if a man makes a lease for twenty-one years, if the lessee so long live, and after the lessor and lessee join in a grant by deed of the term to another, and after the first lessee dies within the twenty-one years, that yet the grantee shall enjoy it during the residue of the term absolutely. But to reconcile this case with the other, it must be intended, that in the assignment no notice is taken of the express limitation affixed to the lease, but that they joined in an assignment of the lease for the residue of the twenty-one years, and then it may well be construed to amount to a *confirmation by the lessor* for that time, as the lessor may confirm the land to the lessee for any longer time, and thereby enlarge his estate or interest.

If *A.*, lessee for the life of *B.*, make a lease for years by indenture, and after purchase the reversion, and then *B.* die, *A.* shall avoid his own lease, notwithstanding he hath now an estate capable of supporting the lease for the whole term; for he may confess the lease for years as it was, and avoid it by shewing his own estate in the lands at the time of that lease made; and he is not estopped to do this, because the lease took effect in point of interest.

Co. Lit.
47. b.
6 Co. 151 a.
Roll. Abr.
378.

B., tenant for life of *C.*, and he in the remainder or reversion in fee, join in a lease for years by indenture; this during the life of *C.* is the lease of *B.*, who then only had the present interest in the lands, and the confirmation of him in the remainder or reversion; but after the death of *C.*, then this becomes the lease of him in the reversion or remainder, and the confirmation of *B.*: for the lessors having several estates in them in several degrees, the lease shall be construed to move out of each one's respective estate or interest as they become capable of supporting thereof, which is the most natural and useful construction of the lease, especially as there can be no estoppel in this case, by reason of the several interests which passed from each. And therefore during the life of tenant for life, if the lessee, being evicted, should declare of a lease by both, this would be against him, as was adjudged, because for that time it was only the lease of the tenant for life.

Co. Lit.
45. a.
Dyer, 234. b.
Moor, pl.
196. pl.
939.
Poph. 57.
6 Co. 144.

[*A.* tenant for life, and *B.* the reversioner: *A.* only executes a lease, in which they are both named: upon *A.*'s death, this lease is totally void. And though *B.* should execute it afterwards, it will not bind the lessee; for it is not his covenant.]

Ludford v.
Barber,
1 Term
Rep. 86.

3. Of derivative Leases, or by one who is but a Lessee for Years himself.

As a lessee for years may assign or grant over his whole interest; so he may grant it for any fewer or less number of years than he himself holds it; and such derivative lessee is compellable to pay rent, perform covenants, &c. according to the terms agreed in such grant or agreement. Also it is said in (*a*) *Brake*, that a termor so assigning may distrain for the rent, without any power reserved for that

(a) Bro. tit.
Distrains, 7.

that purpose, though a person who assigns his whole interest cannot, because he has no reversion.

2 Vern. 175.
374. & vide
Cro. Eliz.

157.

Leon. 279.
[Holford v.
Hatch,

Dougl. 183.

(b) Hence,
a derivative
lease cannot

have the effect of working a forfeiture under a proviso not to assign. *Cruce v. Bugby*, 3 Wils. 234.
2 Bl. Rep. 766.]

Palmer v.
Edwards,
Dougl. 187.

note. But
such a de-
parture with
the whole
term, if had
as an assign-
ment, not

being in writing, would be supported as an under-lease against the grantor. *Poulteney v. Holmes*,
1 Str. 435. Dougl. 186.

Preced.

Chan. 124.
Colchester
v. Arnet.

2 Vern. 383.
S. C.

[When the whole term is made over by the lessee, although in the deed by which that is done, the rent and a power of entry for non-payment are reserved to him, and not to the original lessee, this is an assignment, and not an under-lease: and therefore, the original lessor, or his assignee of the reversion, may sue or be sued on the respective covenants in the original lease: and this, although new covenants are introduced in the assignment.]

Lessee of a prebend made an under-lease, and the lease being pretty far spent, he requested the tenant to surrender, to enable him to renew, and offered to give any security to grant him a new lease for so many years as he had to come in his old one; but the tenant was obstinate and would not, unless his landlord complied with some demands of his; upon which the landlord brought his bill in equity to enforce him to a compliance: but my Lord *Keeper* said, though it were a benefit to the plaintiff, and no prejudice to the defendant, yet there being no agreement in the deed for that purpose, he could do nothing in it.

But now by the 4 G. 2. c. 28. § 6. it is enacted in the words following, viz. "Whereas many persons hold considerable estates
" by leases for lives or years, and lease out the same in parcels to
" several under-tenants, and whereas many of those leases cannot
" by law be renewed without a surrender of all the under-leases
" derived out of the same, so that it is in the power of any such
" under-tenants to prevent or delay the renewing of the principal lease, by refusing to surrender their under-leases, notwithstanding they have covenanted so to do, to the great prejudice
" of their immediate landlords, the first lessees; for preventing
" such inconveniencies, and for making the renewal of leases
" more easy for the future, be it enacted by the authority aforesaid, that in case any lease shall be duly surrendered in order
" to be renewed, and a new lease made and executed by the chief
" landlord or landlords, the same new lease shall, without a surrender of all or any the under-leases, be as good and valid to all
" intents and purposes, as if all the under-leases derived thereout
" had been likewise surrendered at or before the taking of such
" new lease; and all and every person and persons, in whom any

" estate for life or lives, or for years, shall from time to time be
 " vested by virtue of such new lease, and his, her, and their exe-
 " cutors and administrators, shall be entitled to the rents, cove-
 " nants, and duties, and have like remedy for recovery thereof;
 " and the under-lessees shall hold and enjoy the under-messuages,
 " lands, and tenements, in the respective under-leases comprised,
 " as if the original leases, out of which the respective under-leases
 " are derived, had been still kept on foot and continued; and the
 " chief landlord and landlords shall have and be entitled to such
 " and the same remedy, by distress or entry in and upon the mes-
 " suages, lands, tenements, and hereditaments comprised in any
 " such under-lease, for the rents and duties reserved by such
 " new lease, so far as the same exceed not the rents and duties
 " reserved in the lease, out of which such under-lease was de-
 " rived, as they would have had in case such former lease had
 " been still continued, or as they would have had in case the re-
 " spective under-leases had been renewed under such new princi-
 " pal lease; any law," &c.

4. Of Leases made by a Disfeisor or Disfeisee.

If a disfeisor makes a lease for years, or grants a rent-charge, and the disfeisee confirms it, and after re-enters, yet he shall not avoid the lease or rent, because by his confirmation of them he hath departed with so much of his ancient right, which incorporates and mixes with the lease or grant, so that he can never after avoid them.

Co. Lit. 300.
 Poph. 50.

If one be disfeised of lands, and whilst he is out of possession he intend to make a lease for years, the way is to prepare a deed of lease, and after he hath signed and sealed it, before any actual delivery thereof, as his deed, to deliver it as an escrow to a third person, to be delivered as his deed after entry and actual possession taken in his name; or after signing and sealing before actual delivery, he may make a letter of attorney to a third person, to enter upon the land in his name, and after such entry to deliver it upon the land, or elsewhere, as his deed, to the lessee; and though such letter of attorney be affixed to the deed, (and to make it an effectual letter of attorney, it must be sealed and delivered,) yet the sealing and delivery of that by the lessor, though affixed to the deed of lease, will not be construed a delivery of the lease itself, because no such intent appears, but the contrary; and therefore the delivery of the letter of attorney shall have no more influence upon the deed of lease, than if it had not been affixed thereto: or such disfeisee may prepare a deed of lease, and at the same time execute a letter of attorney to a third person, to enter upon the land, and after such entry to sign, seal, and deliver the lease as his act and deed to the lessee: and all these ways are good, because the delivery is the essential and finishing part of a deed; and if the possession and seisin be reduced before that comes, the delivery after is as effectual as if the whole deed had been prepared and executed after; because till the delivery, the deed took no effect,

Co. Lit.
 43. b.
 Cro. Eliz.
 433. Stephens v. Elliot.
 3 Co. 55.
 Cro. Eliz.
 446.
 Jennings v. Bragg.
 2 Bend. 81.
 2 Roll.
 Abr. 25.
 Davis v. Bridges.

and when the delivery was, he was in actual possession, and consequently might make such lease. But if such disseisee, being out of possession, had sealed and delivered the deed of lease as his deed, though he had after actually entered upon the land, and then delivered the lease again as his deed, yet no interest would pass to the lessee by either of these deliveries; for, as his deed, it took absolute effect by the first delivery, and then the second delivery, to make it his deed, was void and to no purpose; for a deed cannot have two deliveries: and the first delivery, to make it a lease, was void, because he was then out of possession, and had only a right of entry, which he could not transfer to a stranger; and therefore the lease is absolutely void to carry any interest to the lessee. And so it would be, if after such delivery of it as his deed, he had made a letter of attorney to enter and deliver it as his deed upon the land; for the first delivery made it his deed effectually; but that could pass no interest, because he was then out of possession; and the second delivery to make it a deed was void, because it was his deed by the first delivery, and therefore cannot be delivered again; and *quare*, in the case above-mentioned, if the letter of attorney were at the conclusion of the deed of lease, in the very same parchment or paper, whether the disseisee could distinguish his sealing and delivery of that as a letter of attorney, so that it should not amount to a sealing and delivery of the deed itself, and thereby make void any after delivery, when the possession and seisin were reduced?

Plow. 137. The heir after the death of his ancestor, before any actual entry, may make a lease for years, because the possession in law was cast upon him immediately by the death of his ancestor, and none had possession in fact. But if a stranger first enter by abatement, then such lease made by him after will be void; because by the entry the stranger gains possession in fact, which defeats the possession in law of the heir, so that the heir hath neither possession in fact nor law, whereof to make a lease, and consequently, the lease must be void.

Bro. tit. Leases, 57. Sav. 55. If the heir of the king's tenant *in capite*, or in socage, before livery, or after office found, makes a lease for years, this seems to be good; for such lease being only a contract between the lessor and lessee, may be made before any actual entry, by reason of the possession and seisin in law, which were cast on him by the death of his ancestor. But if he make a feoffment in fee, or a lease for life before livery sued, these cannot be made without actual entry into the land to make livery of seisin, and such entry would be an intrusion upon the king's possession, and amounts to a forfeiture, by attempting to take a freehold out of the king.

5. Of Leases made by Joint-tenants or Tenants in Common.

Co. l. it. 163. Bro. tit. Grants, 154. Roll. Abr. 248. If two joint-tenants are in fee, and one lets his moiety to J. S. for years, to begin after his death, this is good, and shall bind the other, if he survives; because this is a present disposition; and binds the land from the time of the lease made, so that he

he cannot after avoid it. But a devise for years in such manner, by one joint-tenant, would not bind the other surviving, because that is no present disposition, nor binding upon the devisor himself, inasmuch as he may revoke or cancel his will, and so destroy that devise; and therefore such devise, not taking effect to any purpose till his death, comes too late to prevent the survivorship, which being the elder title, shall be preferred, and shut out the devise. So, all grants or charges by one joint-tenant out of the land, fall off with his life, and cannot affect the survivor, because they being no immediate disposition of the land itself, that comes whole and entire to the survivor under the first title, and, by consequence, over-reaches all intermediate charge or grants thereout by the other joint-tenant who is dead.

But if one joint-tenant grants *vesturam* or *herbagium terre* for years, and dies, this shall bind the survivor. So, if two joint-tenants are of a water, and one grants a separate piscary for years, and dies, this shall bind the survivor; because in these cases the grant of the one joint-tenant gives an immediate interest in the thing itself whereof they are joint-tenants. Co.Lit.186.

If two joint-tenants for life are, and one of them makes a lease for years of his moiety, either to begin presently, or after his death, and dies, this lease is good and binding against the survivor; the reason whereof is, that notwithstanding the lease for years, the joint-tenancy in the freehold still continues, and in that they have a mutual interest in each other's life, so that the estate in the whole, or any part, is not to determine or revert to the lessor till both are dead; for the life of the one, as well as of the other, was at first made the measure of the estate granted out by the lessor; and therefore so long as either of them lives, if the joint-tenancy continues, he is not to come into possession. Now these joint-tenants having a reciprocal interest in each other's life, when one of them makes a lease for years of his moiety, this does not depend for its continuance on his life only, but on his life and the life of the other joint-tenant, whether of them shall live longest, according to the nature and continuance of the estate whereout it was derived; and then, so long as that continues, so long the lease holds good, and, by consequence, such lessee shall hold out the surviving joint-tenant and the reversioner, till the estate, whereout his lease was derived, be fully determined. But if a rent were reserved on such lease, this is determined and gone by the death of the lessor, for the survivor cannot have it, because he comes in by title paramount the lease; and the heirs of the lessor have no title to it, because they have no reversion or interest in the land: but *quære*, if the executors or administrators cannot maintain an action of debt or covenant, either upon the covenant in law, or express covenant, for payment of the money, if there be any? Moor, pl. 514. Poph. 96. Harbin v. Barton. 3 Bulst. 273. Roll. Rep. 401. Dyer, 187. Plow. 263. Cro. Jac. 91. 3 Bulst. 131. Co. Lit. 184. b.

A. and *B.* joint-tenants for their lives; *A.* by indenture leases the moiety which he holds in jointure with *B.* to *C.* for sixty years from the death of *B.*, if he the said *A.* should so long live, and demises the other moiety to *C.* for sixty years from his own death, if *B.* shall so long live; then *A.* dies, and *B.* survives: it was adjudged, Co. 96. Co. Lit. 185. a. Moor, 139. Cro. Jac. 91. Moor, pl. 1074. Willock v. Horton.

judged, that this lease was void for both moieties; for by the first words it was a good lease from *A.* of his part, upon the contingency of his surviving *B.*, but that never happened; and as to *B.*'s part, *A.* had no power to lease or contract for it during the life of *B.*, though he had happened after to survive him, for that it was but a bare possibility, which could not be leased or contracted for; and therefore the lease was void in the whole.

Cro. Jac.
377. Roll.
Rep. 309.
3 Bulf. 130.
Roll. Abr.
131. Daniel
and Wad-
dington.

A. and *B.* joint-tenants for their lives, *A.* leases his part for sixty years, if he and *B.* so long live, then *B.* surrenders his part, and takes back a new estate; then *A.* dies, living *B.*: it was adjudged, that this lease made by *A.* was determined by his death; for the joint-tenancy, which would have given them, or their lessees, an interest in each other's life, is by the surrender of *B.* determined and gone, and then the lease of *A.* stood single on his own life, and consequently, by his death is determined. So it would be, if after such lease for years by one joint-tenant, they had made partition of the joint-estate, and then the lessor had died, his lease would be at an end, because the joint-tenancy, which should have supported it after his death, is by the partition defeated and gone.

Co. Lit.
128. a.
Cro. Jac.
83. 611.
Moor, pl.
194. Roll.
Abr. 851.
1 Roll.
Abr. 877.

If one joint-tenant or tenant in common makes a lease for years of his part to his companion, this is good; for this only gives him a right of taking the whole profits, when before he had but a right to the moiety thereof; and he may contract with his companion for that purpose, as well as he may with any stranger.

[If two tenants in common of lands join in a lease for years by indenture of their several lands, this shall be the lease of each for their respective parts, and the cross confirmation of each for the part of the other, and no estoppel on either part, because an interest passeth from each respectively.]

6. Of Leases made by Copyholders.

Moor, 184.
Salk. 186.
pl. 5.

If a copyholder takes upon him to make leases, not warranted by the custom of the manor, and without the lord's licence, this is a forfeiture of his copyhold, but no disseisin to the lord; and the lease is good against every body but the lord.

Moor, 292.
Hed. 122.
Bulf. 189.

And it seems not to be material whether such lease be by parol or in writing; but it must be a perfect lease, and must have a certain beginning and certain end, for otherwise the lease is void, and carries but an estate at will at most; which is no forfeiture.

2 Mod. 79.
Richards
v. Seley.

A., copyholder for life, having got *B.* to be bound with him for 100*l.* and given him a counter-bond, executes a deed, whereby reciting the counter-bond, and the estate *A.* had in the lands for life, *A.* covenants, grants, and agrees for himself, his executors, administrators, and assigns, with *B.*, that he, his executors and administrators, should hold and enjoy these lands, from the making of the deed, for seven years, and so from the end of seven years to seven years, for and during the term of forty-nine years, if *A.* should so long live, with a covenant, that if the 100*l.* were paid, and *B.* indemnified, the deed should be void: the question was, whether

whether this would amount to a lease for forty-nine years, if the copyholder should so long live; and so being in the case of a copyhold, and no custom to warrant such lease, be a forfeiture of the estate? And it was argued to be no lease, because such construction would be a wrong to both parties; to the one, by defeating his security, and to the other, by a forfeiture of his estate; which would be unjust; when by construing it only to be a covenant for the whole, each might be safe, and their intention answered; and it was said, that the cases, wherein such words have been held to amount to a lease, were all of them of freehold, where no such mischief could ensue: but the court, notwithstanding, inclined this was a good lease by the intention of the parties, and consequently a forfeiture; for then the jury would have found it so; but if the words had been doubtful, and such as would admit of divers constructions, there, to prevent a forfeiture, it should be taken to be only a covenant; but here, the words are plain and clear: but no judgment was given.

A copyholder, by articles of agreement, covenanted and promised with another, that he should hold for a year at *halves*, according to the custom of the manor, at such a rent, and so from year to year for five years: this was adjudged no forfeiture, for the prejudice that would ensue on such construction to the copyholder: also, the lease being worded *secundum consuetudinem manerii* is tied up to the custom of the manor; so that if there be no custom to warrant this manner of leasing, the lease itself falls to the ground: also, there was further in the lease a covenant, that if the lessor put out the lessee, he should be allowed so much rent by way of retainer; so that the lessee was at uncertainty whether he should enjoy it during the whole term; for this gave the lessor liberty to put him out, making the allowance agreed upon, and stipulated between them: and besides, it was doubted if the words *covenant and promise that he should enjoy* for such a time, would amount to a lease, or were not rather relative to enjoying after a lease made: for the word *covenant* is none of those reckoned up to make a lease; and in the cases where it hath been so held, it was joined with the word *agreed*, which imports a mutual consent or agreement of both parties; and here, though there be the word *agreed* or *agreement*, yet it is only in the style of the articles. Also, here, the covenant is quietly to enjoy, which *a fortiori* does not make a lease, but regards only the manner of enjoying it after a lease made, and being only to hold at halves, it can be no lease. This is the manner of reporting this case, which arises so by jumps and steps, and is so incoherently put, that it is hard to conclude any thing from it relative to the matter before us: besides that the gift of the case seems to turn upon the words *holding at halves*; for they are to govern and explain the words *covenant and promise*, which of themselves may be applied to ten thousand other things, and have no meaning at all, till the subsequent words explain what it is he covenants and promises: and the words *holding at halves* are of so ambiguous and doubtful a signification, that according to the rule taken in the foregoing case, they might well leave room for

2 Keb. 267.
Lenthall v.
Thomas.

Cro. Elis.
141. Hare
v. Cicely.

the court to make such a construction as should prevent a forfeiture : and in one case it is expressly held, that *exposing to half* is no lease, but only a liberty to plough and sow, but passes no interest, nor can the lessee have trespass for breaking the soil : but in the same book it is said, that if he had exposed it to halves for two or three *crops*, this had been a lease.

Latch. 199.
Godb. 364.
Jon. 157.
Noy, 92.
in all the
S. C. be-
tween Ash-
field and
Ashfield.

An infant copyholder, without licence of the lord, made a lease for years by parol, rendering rent, and at full age was admitted, and accepted the rent, and then ousted the lessee. In this case, though it was agreed, that a lease for years, rendering rent, by an infant, of freehold lands, was only voidable ; yet it was urged, that in case of a copyhold it would be otherwise ; because the lease not being warranted by the custom, would be a disseisin to the lord, and, consequently, a forfeiture of his copyhold, which being a great mischief to the infant, the court ought rather to help him, by adjudging such lease to be absolutely void. But, notwithstanding this, it was adjudged, that the lease was a good lease till avoided, and that a lease for years by a copyholder without licence is not a disseisin : and admitting it should be a forfeiture in this case, yet if the lord enters for it, the infant may re-enter upon him, and so is at no mischief ; and therefore he, having accepted the rent at full age, hath made it good and unavoidable. And *Jones* says, that it was held to be no forfeiture as to the lord ; but that admitting it were, yet it was a good lease as to all strangers ; and that for this reason principally it was adjudged such acceptance had made it good.

Cro. Car.
233. Jon.
249. Roll.
Abr. 508.
Matthews
v. Wheleston.

A copyholder for life made a lease for a year by indenture, dated such a day, and the same day, by another indenture, makes a second lease to the same party for a year, to commence such a day, being two days after the first lease should expire ; and by another indenture dated the same day and year, makes a third lease of the same lands to the same party, to commence such a day, being two days after the second lease would expire ; and so betwixt each lease two days betwixt the beginning of the new lease and the end of the former ; and if this was a forfeiture of his estate, because the custom of the manor warranted a lease but for a year only, was the question ? And it was agreed, that whether the custom of the manor, or the general custom of the realm, allows a copyholder to make a lease for a year, this ought to be a lease in possession, and he cannot, after such lease made, make another in reversion ; and these three leases being made all at one time, shall be intended one entire contract, and so a lease for three years, which is more than the custom warrants, and, consequently, a forfeiture : and the intervention of two days between each lease was but a fraud and covin to defeat the lord of his forfeiture, which shall not avail ; and therefore it was adjudged against the copyholder, that he had forfeited his estate.

Cro. Jac.
308. Bull.
215. Roll.
Abr. 507.
Lutterell
and Weston.

So, where a copyholder, who by the custom of the manor could make a lease for one year only, made a lease for a year excepting the last day of the year, & *sic de anno in annum*, excepting the last day of every year, during his own life ; this was adjudged, by all the

the court, clearly to be a forfeiture, and the exception of a day at the end of every year to be only a shift to evade the custom; which it cannot do; for it is a lease certain for two years at least, excepting two days, which in effect, is a lease for more than one year; and if he might by such exception of a day or two, at the end of two years, get out of the reach of a forfeiture, he might then make a lease for twenty years, or what other time he thought fit, which the law will not permit; and in *Bulf.* this manner of leasing appears expressly to have been by articles, by way of covenant, that he should have the land in that manner, not by words of immediate leasing, which make this a direct authority, that a covenant that he shall have or enjoy such lands, amounts to an immediate lease, and not a covenant barely; and though it were in case of a copyhold, yet it would not save the forfeiture.

So, if a copyholder makes a lease for a year, *et sic de anno in annum* during ten years, this is clearly a good lease for ten years, and if not warranted by the custom, will be a forfeiture of his estate.

Rol. Abr.
508. *Bulf.*
190. *Cro.*
Jac. 301.
2 *Mod.* 81.

These cases being so adjudged, and that a copyholder cannot, either by way of covenant, or of executory and renewable leases annually, prevent the forfeiture of his estate, if he exceeds the number of years warranted by the custom, and has no licence from his lord for that purpose; let us see if there be any way yet found out to avoid this mischief, and yet make over to the lessee some certainty that he shall enjoy the lands after the term warranted by the custom is expired, without which few will care to take leases for so short a term as the customs of most manors generally allow; and we find one case where an attempt of this kind was made, and it seems to have succeeded accordingly: the case was this: A copyholder made a lease for a year only of his copyhold land, according to the custom, and covenanted that after the end of this year the lessee should have or enjoy the same lands for another year, and so *de anno in annum* for ten years; this was held by *Yelverton* Justice to be no such lease as would make a forfeiture, because he had a lawful estate but for one year only; and the court agreed with him herein; and this seems to be a very reasonable construction; for when he had in express terms leased it but for one year only, and after in the deed covenanted for the lessee's having or enjoying it for a longer term, this variation in the manner of expression must vary the sense of it likewise; for now it appears that he intended by the covenant something different from the lease itself, otherwise he would not have departed from that form of expression, which was the most proper and natural whereby to signify his intention of leasing; and then it would be unjust and unnatural to strain the covenant, which has a meaning proper and peculiar to itself, to signify the same with the first part of the deed, which varies not only in form, but was also intended to quite another purpose.

Cro. Jac.
301. *Bulf.*
190. *Lady*
Mount-
ague's case.

And perhaps in such covenant it may be still better if it were worded to permit and suffer the lessee to have, hold, and enjoy the lands in such manner; for a covenant in that form, even of free-

Rol. Abr.
848.
3 *Bulf.* 252.
2 *Mod.* 81.

hold lands, will not amount to an immediate lease, because the words *permit and suffer* prove that the estate is still to continue in him from whom the permission is to come; for if any estate thereby passed to the covenantee, he might hold and enjoy it without any permission from the covenantor; and therefore in such case the covenantee hath only the bare covenant for his security of enjoyment, without any actual estate made over to him.

Doe v.
Clare,
2 Term
Rep. 739.

[In ejectment for a copyhold, the defendant produced a paper-writing, written upon an agreement stamp, under the hand and seal of *T. Tidd*, of whom the lessor of the plaintiff purchased, made between *T. Tidd* and *T. Clare* (the defendant), reciting, that *M. S.* was seised of the premises in question for her life; and that *Tidd* had agreed with *Clare*, that *in case he should be seised of the premises on the death of M. S. he would immediately on her death demise and let them to Clare*, on the terms and conditions mentioned; "Now therefore the said *Tidd* doth hereby agree to demise and let unto the said *Clare* all, &c. and all such copyhold premises as he shall or may be entitled to on the death of the said *M. S.*, to hold from and immediately after the death of *M. S.* for the term of 21 years, at the yearly rent of 12 l. 12 s. And the said *Tidd* doth hereby promise and agree to and with the said *Clare*, that he the said *Tidd*, on the death of the said *M. S.*, and on his becoming entitled to the said premises, shall and will procure a licence to let the said premises." Lord Kenyon was of opinion, at the trial, that the instrument amounted to a lease, there being words of present demise contained in it, and therefore nonsuited the plaintiff. But on the motion for a new trial, his lordship said, that having consulted with the other judges, he was clearly convinced he was mistaken in the opinion which he had holden at the trial; and that they were all of opinion, that the instrument in question was an executory agreement only, and not a lease, for two reasons: first, because, if this were holden to be a lease, a forfeiture would be incurred; whereas that would be contrary to the intent of the parties, who had cautiously guarded against it by the insertion of a covenant, that a licence to lease should be procured from the lord: and secondly, the stamp is conformable to the nature of an agreement for a lease, and not to a lease itself.]

7. Of Leases made by Executors or Administrators.

Executors and administrators, as they may dispose absolutely of terms for years vested in them in right of their testators or intestates; so may they lease the same for any fewer number of years, and the rent reserved on such leases shall be assets in their hands, and go in a course of administration.

6 Co. 63.
67. b.
Sir Moyle
Finch's case.
Vide 5 Co.
29. Prince's
case.

So, where lessee for fifty years of a reversion expectant upon a lease for life makes his will in writing, and thereof appoints one *B.*, his son, an infant of three years of age, executor, and dies; administration is granted to *C. durante minori etate* of *B.* generally; then *C.* makes a lease for ten years, without reserving any rent, for

for aught appears; yet this lease was held good, because, by the ecclesiastical law, *minor 17 annis non admittitur fore executor*; and therefore administration being granted generally during his minority, the whole term and power of disposing thereof, for that time, vests as absolutely in the administrator as it would have done in the executor himself, if he had been of an age capable of acting therein; because for that time the testator died *quasi intestatus*, and the administrator for that time hath the same power as if he had actually died intestate; and therefore such lease is good, at least till the executor attains his age of seventeen years, when such administration ceases: and some held, that such lease would hold good after, till the executor avoided it by actual entry, by reason of the general power which such administrator had in the mean time; and therefore such continuing acts are not *ipso facto* determined by the ceasing of the administration, but are only voidable in the same manner as other leases would be, *viz.* by an entry of the executor, when he comes to take upon him that office. But if the administration had been special, *ad opus, commodum, & utilitatem* of the executor during his minority, & *non aliter, nec alio modo*, as it was in *Prince's* case, then none could make title by virtue of such a lease made by such special administrator, even during the minority of the executor; for the nature and manner of the administrator's power appearing in the very title which the lessee must make to such lease, this lease would appear not to be pursuant thereto, because it could not be of necessity, nor for the use or advantage of the infant, since it could not take effect during the life of the tenant for life; and therefore such lease would be condemned as void presently.

8. Of Leases made by a Bailiff of a Manor.

A bailiff of a manor cannot, by virtue of his office, make leases for years; for his business is only to collect rents, gather the fines, look after the forfeitures, and such like; but he hath no estate or interest in the manor itself, and therefore cannot contract for any certain interest thereout. But the lord of the manor may give him a special power to make leases for years, as he may do to any stranger; and then such leases, if they are pursuant to the power, and made in the name of his lord, will be good as leases by the lord himself: for the bailiff, though he hath such power, cannot make them in his own name. But a general bailiff of a manor may make leases *at will*, without any special authority, because being to collect and answer the rents of the manor to his lord, if he could not let leases at will, the lord might sustain great prejudice by absence, sickness, or other incapacity to make leases, when any of the former leases were expired; and such leases at will are for the benefit of the lord, and can be no ways prejudicial to him, because he may determine his will, when he thinks fit.

But if a bailiff of a manor hath a special power to make leases for years, as he ought to make them in the name of his master, so they ought to be made in writing, that the authority may appear

Bro. tit.
Bailly, 40.
41. tit.
Leases, 37.
Cro. Jac.
99. Roll.
Abr. 339.

2 Chan.
Ca. 202.
Rothwell v.
Sir Charles
Hudley.

to be pursued : therefore, where a bailiff constituted by writing to receive rents, manage and let the lands, made a parol lease for eleven years, and the lessee, being turned out at law upon an ejectment, brought a bill for relief in Chancery, the bill was dismissed, because he had only a parol lease, which the bailiff had no power to make.

9. Of Leases made by a Guardian.

Lit. § 123,
124-
Co. Lit.
88, 89.
Vaugh. 18.

A guardian in focage may make leases for years in his own name, and the lessee may maintain ejectment thereupon ; for this guardian is a person appointed, not by any special designation of the party, but by the wisdom of the law, in respect of the lands descended to the infant ; so that where no lands descend, there can be no such guardian : and his office originally was to instruct the ward in the arts of tillage and husbandry, that when he came of age he might be the better able to perform those services to his lord, whereby he held his own land : and though the office now be in some measure changed, as the nature of the tenure itself is, since the time that the focage tenants bought off their personal labours and services with an annual rent to the lord, yet it is still called focage tenure, and the guardian in focage is still only where lands of that kind (as most of the lands in *England* now are) descend to the heir within age : and though the heir after fourteen may choose his own guardian, who shall continue till he is twenty-one, yet as well the guardian before fourteen, as he whom the infant shall think fit to choose after fourteen, are both of the same nature, and have the same office and employment assigned to them by the law, without any intervention or direction of the infant himself ; for they were therefore appointed, because the infant, in regard of his minority, was supposed incapable of managing himself and his estate, and, consequently, derive their authority, not from the infant, but from the law ; and that is the reason they transact all affairs in their own name, and not in the name of the infant, as they would be obliged to do, if their authority were derived from him : and if their authority were derived from him, it would by no means answer the intention of the law in appointing them ; for then all acts done by virtue of such derivative authority could be of no more force than if done by the person himself who gave that authority, since none can communicate more power to another than he has himself ; and that would invalidate all their contracts, and make them favour of the same imbecility as if made by the infant himself. Therefore, to enable them to take effectual care of the infant, and his affairs, the law has invested them, not with a *bare authority* only, but also with an *interest*, till the guardianship ceases ; and to prevent their abuse of this authority and interest, the law has made them accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit ; and therefore their authority and interest extends only to such things as may be for the benefit and advantage of the infant, and whereof they may give an account ;

account; which is the reason they cannot present to any benefice in right of the heir, because they can make no advantage thereof, (for that would be simony,) and, consequently, have nothing therein whereof they can give an account; and therefore the infant himself shall present thereto.

From what has been said it appears, that a guardian in focage hath not only a *bare authority*, but an *interest* in the lands descended, and therefore, during that time, may make leases for years in his own name, as any other who hath an interest in lands may do; for he is *quasi dominus pro tempore*. And if he makes leases for years to continue beyond the time of his guardianship, such leases seem not to be absolutely void by the infant's coming of age, but only voidable by him, if he thinks fit: for they were not derived barely out of the interest of the guardian, or to be measured thereby, but take effect also by virtue of his authority, which, for the time, was general and absolute; and therefore all lawful acts done during the continuance of that authority are good, and may subsist after the authority itself, by which they were done, is determined; and consequently, the infant, when he comes of age, may by acceptance of rent or other act, if he thinks fit, make such leases good and unavoidable. But a guardian by (a) nurture cannot make any leases for years, either in his own name, or in the name of the infant, for he hath only the care of the person and education of the infant, and hath nothing to do with the lands merely in virtue of his office; for such guardian may be, though the infant hath no lands at all, which a guardian in focage cannot.

A. lets land to B. for four years, and the lands being holden in focage, and the heir under fourteen, the guardian in focage by an indenture, before the first lease was expired, lets the same lands in his own name to B. for eight years; and if by this acceptance of a new lease from the guardian in focage the first lease was surrendered, was the question? and it is said to be holden by the court, that it was surrendered; or, if it could not be properly called a surrender, for want of a reversion in the guardian in focage, yet they held, that at least the first lease was thereby determined by admittance of the lessor's power to make such present lease, which, if the first should stand in the way, he could not do; and a guardian in focage hath power to make leases for years. Though this case is cited in (b) *Hutton* to be no surrender, yet it was in a case, where the question was of a surrender strictly and properly so called; and therefore though it were not to be cited for an authority of a surrender properly so called, yet it might amount to a determination of the first lease, which in the principal case, all the court agreed that it did: but they held, it would be otherwise in case of such lease made by a guardian *pur nurture*, for he can only make leases at will; and therefore such second lease at will must be absolutely void, when the lessee was in possession already by virtue of a lease for years.

If a woman, who is guardian in focage to her son, marries again, and the husband and she join in a lease of the infant's lands, this lease, upon the death of the husband, becomes void; for the interest

Bro. tit.
Garden, 19.
70. Cro.
Jac. 55: 98.
Shopland
v. Ridler.
2 Roll.
Abr. 41.
Brisden v.
Hussey.

(a) But
note, a testa-
mentary
guardian,
or one ap-
pointed pur-
suant to the
statute 12
Car. c. 24-
is the same
in office and
interest with
a guardian
in focage.
Vaugh. 179.

Leon. 158.
322.
4 Leon. 7.
Owen, 45.
56. Willis
and White-
wood.

(b) *Hutton*,
105.

Flow. 273.
Osborne's
case.

terest which she had in the lands was in right of the infant, and therefore shall not bind her, as those acts shall in which she joins with her husband in parting with her own possessions.

10. Of Leases made pursuant to Authority.

Roll. Abr.
330. 9 Co.
76. b. 77.
Cro. Eliz.
115.
Moor, pl.
1106.

If one hath power, by virtue of a letter of attorney, to make leases for years generally by indenture, the attorney ought to make them in the name and style of his master, and not in his own name: for the letter of attorney gives him no interest or estate in the lands, but only an authority to supply the absence of his master by standing in his stead, which he can no otherwise do than by using his name, and making them just in the same manner and style as his master would do if he were present: for if he should make them in his own name, though he added also, by virtue of the letter of attorney to him made for that purpose; yet such leases seem to be void, because the indenture being made in his name, must pass the interest and lease from him, or it can pass it from no body: it cannot pass it from the master immediately, because he is no party; and it cannot pass it from the attorney at all, because he has nothing in the lands; and then his adding by *virtue of the letter of attorney*, will not help it, because that letter of attorney made over no estate or interest in the land to him, and, consequently, he cannot, by virtue thereof, convey over any to another. Neither can such interest pass from the master immediately, or through the attorney; for then the same indenture must have this strange effect at one and the same instant, to draw out the interest from the master to the attorney, and from the attorney to the lessee, which certainly it cannot do; and therefore all such leases made in that manner seem to be absolutely void, and not good, even by estoppel, against the attorney, because they pretend to be made not in his own name absolutely, but in the name of another, by virtue of an authority which is not pursued. This case therefore of making leases by a letter of attorney, seems to differ from that of a surrender of a copyhold, or of livery of seisin of a freehold, by letter of attorney; for in those cases when they say, *we A. and B., as attornies of C., or by virtue of a letter of attorney from C., of such a date, &c., do surrender, &c., or deliver to you seisin of such lands*; these are good in this manner, because they are only ministerial ceremonies or transitory acts *in pais*, the one to be done by holding the court rod, and the other by delivering a turf or twig; and when they do them as attornies, or by virtue of a letter of attorney from their master, the law pronounces thereupon as if they were actually done by the master himself, and carries the possession accordingly: but in a lease for years it is quite otherwise, for the indenture, or deed alone, convey the interest, and are the very essence of the lease, both as to the passing it out of the lessor at first, and its subsistence in the lessee afterwards: the very indenture, or deed itself, is the conveyance, without any subsequent construction or operation of law thereupon; and therefore it must be made in the name and style of him who has such interest to convey, and not in the name of the attorney.

9 Co. 76,
77. Combe's
case.

attorney, who has nothing therein; but in the conclusion of such lease it is proper to say, *in witness whereof A. B. of such a place, &c. in pursuance of a letter of attorney hereunto annexed, bearing date such a day; or if the letter of attorney be general, and concern more lands than those comprised in the present lease, then to say, in pursuance of a letter of attorney, bearing date such a day, &c., a true copy whereof is hereunto annexed, hath put the hand and seal of the master, and so to write the master's name, and deliver it as the act and deed of the master; in which last ceremony of delivering it in the name of the master by such attorney, this exactly agrees with the ceremony of surrendering by the rod, or making livery, by a turf or twig, by the attorney, in the name or as attorney of his master; which proves that there is a great diversity between using the name of the attorney in the making of leases, and using his name in making a surrender of copyhold, or livery of seisin of a freehold estate.*

The king, by letters patent, gave authority to his surveyor to make such leases of such lands, reserving the ancient rent, and the surveyor makes leases by indenture between the king *ex una parte*, and *J. S. ex altera parte*, and the indenture *testatur quod dominus rex dimisit, &c.* and the conclusion was, *in cujus rei testimonium the surveyor sigillum suum apposuit*: the court held these leases to be void, because not pursuant to his authority; for a bailiff cannot make leases in his own name, though it be but *de anno in annum*, and of lands usually let, but he ought to make them in the name of his master; so here the surveyor ought not to have put his own seal to the lease, but the seal of the king, for without the king's seal it cannot be his lease; and the manner of pleading such lease proves this, for the words are; *quod dominus rex per A. B. sigillum suum apposuit*; and a great case was cited, where such lease by a bailiff, in his own name, was held to be void.

Moor, pl.
191.
Dyer, 132.

In ejectment the case was, that one *A.* devised lands to *B.* his son in tail, with divers remainders over, and makes one *C.* overseer of his will, and willed that he should have the education of his son till he came to the age of twenty-one, and to receive, set, and let, for the said *B.*, the said lands so given him, and thereof to account to the said *B.*, being allowed his charges, &c. *C.* makes a lease for seven years in his own name, with reservation of rent to himself; and this lease by computation, was to continue half a year after *B.*'s attaining his full age; and if this lease was good for any part of the term, was the question; *C.* being dead, and *B.* not yet of age? and it was argued to be good for the whole term, or at least during the minority of the son, and only void for so much as exceeded the full age of the son, and that *C.* had an interest in the land, and not a bare authority only; for then all leases must have been made in the name of the infant, and so he might avoid them whenever he thought fit, which the testator never intended to empower him to do. But *Popbam, Clench, and Fenner* held that, as this devise is, *C. was but a guardian for nurture*, and could not make leases at his own will and pleasure; for then he might make them

Cro. Eliz.
678. 734-
Piggot v.
Garnish.

them for one hundred years; but here he can only make leases at will, for there is no other time certain appointed, and he is but in the nature of a bailiff, and accountable; and therefore it was adjudged that the lease was void. From this case it appears, that if the authority had been sufficient to enable him to have made leases for years, such leases made by him during the continuance of that authority would not have determined therewith, but should have subsisted during the whole term for which they were made; and the infant in such case could not, when he came of age, have avoided them, as he may leases made by his guardian in socage, if he thinks fit, because the lessee would have been in by the will and devise, not by the guardian *pur nurture*, admitting the authority or devise had been sufficient for that purpose, which in none of the following cases of devises it seems to be.

Moor, 774.
Yelv. 73.
Carpenter
and Collins.
Dyer, 26. b.

One devises land to his son when he comes to the age of twenty-four years, and in the mean time that his executor shall have the oversight and dealing of all his lands and goods: this gives the executor no interest to make a lease certain for years, but only an authority to oversee and order the land in right of the son, and for his use and benefit, as wanting discretion to manage it himself; but the whole estate remains in the mean time in the son by descent, and the executor can only make leases at will; for there is no express devise to him of the lands till the son comes to twenty-four, nor any express authority to make leases for years in the mean time; and the heir shall not be disinherited, though but for a time, without a manifest intent in the will to that purpose. And where in that case, the son died before he came to twenty-four years of age, it was held, that whether the devise gave the executor an interest or an authority only, yet it determined by the death of the son, whenever that happened; for it was only affixed to his care of the son, and, consequently, determined by his death, and was never intended to exclude the next heir till the son should or might have attained his age of twenty-four years; and then the executor having power to make leases at will only, the next heir may, whenever he thinks fit, determine them by entry, or otherwise.

Cro. Eliz.
190.
Parker and
Plummer.
Cro. Eliz.
252. Smith
v. Havens.
Hob. 285.
Balder v.
Blackbourn.
Dyer, 210.
pl. 24.

But if the words of the will had been that the executor should have the land, or the profits of the land, to his own use, without account, till the son should come to twenty-four, provided, or to the intent that he should bring up and educate his child or children; this would not only amount to a trust and confidence in the executor, but would also fix such an interest in him for answering the purposes of the will, as would go to his executors, though he should die before the son attained the age of twenty-four years; and the education of the child, or children, is no such matter of privity or confidence, but that another may do it as well; and, consequently, in this case, such executor may make leases for years, till the son should or might attain to the age of twenty-four years; and this would not determine, though the son should die before that age, till by computation of time he might have attained that age, if he had lived.

One devised lands to his wife *de anno in annum*, till his son should come to the age of twenty-one years: this was by all the justices held such an interest as would determine by the death of the son, though before twenty-one; for the intent was only that his wife should have the lands during the minority of the son, by reason of his supposed incapacity to manage them during that time, which reason is at an end by his death: and this the rather appears to be his intent by the words *de anno in annum*, which are executory and applicable to each single year, and shew his caution, not to give it to his wife for any determinate number of years, lest his son should die in the mean time, whose death, or attainment of twenty-one years, he intended should be the determination of the wife's interest. But by *Dyer*, it would have been otherwise, if the words had been, *till the son should or might come to that age*; and therefore this case differs from *Boraston's* case, and the other cases, which were adjudged, upon a special reason, that for payment of debts, or for the support and provision of the devisee or executrix, or for maintenance of his children generally, where he had several; there in such cases, though the son to whom it was devised at such an age should die before that age, yet the executrix, or devisee, should have such an interest vested in them for those purposes, as should not determine till the son should or might have attained that age, if he had lived; and, consequently, such executrix, or devisee, may make leases for years, which shall continue as long as their own interest therein.

Moor, pl.
143. 3 Co.
19, 20.
Boraston's
case. Chan.
Ca. 114.
2 Chan.
Rep. 136.

11. Of Leases made pursuant to Powers in private Conveyances and Settlements.

As in the settlements of estates in families, it is usual to limit but estates for life to the present takers, to prevent their power of alienation and defeating their issue of the provision intended them by such settlements; and yet it is necessary the land comprised in such settlements should be continued in the occupation and manurance of tenants and farmers, who, being skilled in the arts of husbandry, know best how to improve and manage them to advantage; therefore, to encourage the industry of such farmers, it is become customary to empower the tenants for life to grant leases for a certain time, which otherwise they could not do, having themselves but an uncertain interest determinable on their deaths. It will therefore be necessary to consider these kind of leases, and how far their pursuing or deviating from the several powers whereon they are founded will invalidate them, and how far not; as also upon what sort of settlements such powers may be reserved, and what not.

1 Burr. 220.
Vide ante the
case of Orby
and Lord
Mohun,
letter (E);
[and note,
that the
rules of law
adopted in
cases of ec-
clesiastical
leases, and
of leases
made by
tenant in
tail under
the statute
of 32 H. 8.
apply equally
to leases made by virtue of powers in settlements.]

Tenant for life, upon a settlement made 12 *Jac.* 1. had power to make leases of all or any of the lands which at any time heretofore have been usually demised or let in possession for three lives, or any number of years determinable on three lives, or for twenty-one years, or under, reserving the rent thereupon now yielded or paid, or more, so long as the lessees, their executors and

Vaugh. 28
to 35.
2 Jon. 27
to 37.
Tristram v.
Viscountess
Baltinshaus.

and assigns duly pay the rents, and perform the conditions, according to the true meaning of their indentures of lease. The tenant for life makes a lease of several parts of those lands, for years determinable on three lives, so long as the lessees, their executors and assigns, duly pay the rents, &c. (*verbatim* as in the power), reserving the same rents which were reserved 12 *Jac.* 1. when the settlement was made, and specifying particularly what those rents were; and there being other lands, called *Lofield*, which were found not to have been in lease since 12 *Eliz.* (when they were let for twenty-one years at 100*l.* *per ann.* rent), he now leases those lands for twenty-one years, rendering 100*l.* *per ann.* rent, and with the same clause as in the other, *viz.* so long as the lessees, their executors and assigns, duly pay, &c. The rents due at *Mich.* for the lands in the first lease were found to be in arrear, but paid in a month after; and the rent upon the lease of *Lofield* was duly tendered, but not received; and before the next rent-day the defendant, as heir at law in remainder, entered, upon whom the lessees re-entered to maintain their leases, &c. 1. It was agreed, that the limitation in the several leases, so long as the lessees, their executors and assigns duly pay, &c. was well warranted by the power being *in terminis* the same with the power, and therefore was good. 2. That by non-payment of the rent at the days, the leases were determined, so that no acceptance after could save or set them up again. 3. It seemed to be agreed that the first lease was good, because expressly found, that the rents reserved were the same as were reserved 12 *Jac.* 1. and that necessarily implies that those lands were then in lease, and being ancient lands, they shall be presumed to have been usually demised; and the rather, because no doubt was made of this at the trial. But 4. It was adjudged that the lease of *Lofield* was not warranted by the power; 1. Because the qualifications annexed to the power of leasing shew, that land not so qualified was not to be leased: now the land to be leased by virtue of this power, was such as had been actually let, which must be twice at least; but *Lofield* appears to have been let but once; therefore not within the power: also, *usually* may signify the common continuance of land in lease; as land leased for 500 years long since is land usually demised, though it were demised but once; but then the words, *at any time*, shew that it must be of lands which had been usually at all times let, which *Lofield* was not, being out of lease for above twenty years before the settlement: but chiefly and lastly this lease was adjudged void, because the power was to make leases, reserving the rent thereupon now yielded or paid, *viz.* at the time of the settlement; and this land not having been leased for twenty years before, could be under no reservation of rent at that time, and, by consequence, the rent thereupon then reserved (which was none) could not be reserved upon any after-lease to be made: and the words (*or more*) will not hold, because they are words of relation, and must refer to some rent before, which here was none at all: besides, *more* or *less* are words of comparison, and comparatives necessarily suppose a positive; but nothing or no rent

rent is a mere privative. And yet the objection against this construction seems considerable; for it was said, that the words (*at any time heretofore usually demised*) imply that some lands were not then in lease; therefore the clause of reserving the rents, which were then yielded and paid, must extend only to the rent of such lands as were then in lease, and not of the others, which were not then in lease: yet since he had a power of leasing them, if they had been at any time theretofore usually demised, he might lease them, reserving what rent he pleased; and so is one (a) book expresses in point as to the reservation: but the difference between that case and this is, that there the power was to let all or any the lands generally, without any restraint; whereas this is restrained to lands usually letten, which, as appears afore, this of *Lofeld* was not, having been let but once; and therefore the very power of leasing fails as to that; otherwise the reservation of a rent, though none was reserved before, seems no great objection against the lease: *ideo quare*?

(a) 2 Roll.
Abr. 262.
Cumber-
ford's case.

A settlement was made to the use of *A.* for life with remainders over, provided that the tenant for life may make leases of the premises, or any part thereof, so as upon every lease there be reserved 5 s. an acre for every acre of the land or premises so demised: the tenant for life leases a rector, (which was not included within the settlement, and consisted only of tithes, without any glebe,) reserving rent, or without any rent at all reserved; and if this were a good lease within this power was the question? It was argued not, because construction is to be made upon the whole clause, and the latter words, which appoint the reservation of 5 s. rent for every acre of land, shall restrain the general import of the word *premises* to land only, which can only consist of acres; otherwise it may as well be said, where a power is to make leases, so as the ancient rent be reserved, that you may, by virtue of this power, lease lands which were never before demised, and that the words *ancient rent* shall only be applied to the lands which had been anciently or usually demised. But it was answered and resolved by the court, that this lease was within the power, and so would a lease of land, not usually demised, in the case before put; for the power being general and affirmative at first to make leases of all or any part, the restraint which comes after under the *so as, &c.* shall be extended no farther than the very words themselves import, that is, in the one case, to so much an acre for that which consists of acres, and in the other, to the ancient rent for that which was anciently or usually demised. And this resolution was founded chiefly on *Cumberland's* case, where the power was to make leases of all or any part, so as such rent, or more, were reserved upon every lease as was reserved within the space of two years before; and a lease was made of part of these lands which had not been demised within two years before; and it was resolved to be a good lease, and that he might reserve any rent he pleased, because the power was general to lease all; and therefore the restrictive clause should be applied only to such lands as had been demised within two years before: but *Hale*, in the principal case, said, if

Vent. 294.
2 Lev. 150.
3 Keb 544.
547.
Walker and
Wakemans

2 Roll.
Abr. 262.

it had been *res integra*, he might perhaps be of another opinion. Note also, this case seems against the case of *Vaugh.* 35, before.

Goodtitle v.
Funucan,
Doug. 565.

[Lord *Ferrers* was tenant for life under a settlement, in which there was the following power, *viz.* "That it should be lawful
" for the tenants for life respectively, from time to time, and at
" all times during their respective natural lives, and when they
" shall respectively come into, and be in, *the actual possession of the*
" *aforsaid manors and premises*, by virtue of the limitations afore-
" said, by indentures under their hands and seals, to demise all
" or any of the said manors, messuages, lands, tenements, and
" hereditaments hereinbefore mentioned, or any part thereof, to
" any person or persons whomsoever, in possession, but not by way
" of reversion or future interest, for the term of twenty-one years
" absolute, or any less absolute term; or for any term or number
" of years determinable upon one, two, or three lives, so as upon
" every such lease or leases respectively, there be reserved and
" made payable during the continuance of such lease or leases
" respectively, to be incident to, and go along with the imme-
" diate reversion or remainder of the premises so leased, so much
" or as great yearly rents as, or more than now is, and are paid
" and yielded, or agreed to be paid and yielded for the same, or
" proportionably for any part thereof." Lord *Ferrers*, under this
power, granted a lease to the defendant for ninety-nine years, if
he should so long live. Part of the premises comprised in the
lease, consisted of manors and manerial rights which had never
been leased before, and also of a fishery which had been let be-
fore, but was not at the time of the settlement. Since that time,
it had been let again at 15 s. It was objected, that the manors
and fishery were not demisable under the power. The manors
had never been let; the fishery was not let at the time of the set-
tlement; and the power required the rent then paid, or *more*, to be
reserved. Things then for which *no* rent was *then* paid, could
not be meant to be comprehended. This would avoid the whole
lease; for one entire rent was reserved, and it could not be appor-
tioned. But, by the court, the power is express to demise the
manors and fishery. They are particularly mentioned in the set-
tlement, and the power goes to the whole. They pay under this
lease as great a yearly rent, as at the time of the settlement, for
they paid nothing then. The words, therefore, are complied
with, and this objection could only stand upon *intent*. But no
such *intent* appears. The manors are nominal,—of no value,—
no object of yearly income; the fishery worth only 15 s. a year.
They are convenient to the lessee living on the land, and of no use
to the remainder-man. The intent was to give leave to demise
all, reserving as much rent in the whole, as had been reserved be-
fore. Besides, the words at the end of the power, "or propor-
" tionably for any part thereof," shew that it was the intent that
the *quantum* of the rent, and not any particular part of the pre-
mises included in the settlement, was to guide the person in exe-
cuting the power.

3 Term
Rep. 677.

A., tenant

A., tenant for life under a settlement, in which there was a power, that any person who should be actually seized of the lands by virtue of the settlement might make a lease or leases for three lives, or for twenty-one years, of all or any part of the premises therein comprised, *at such yearly rents, or more, as the same were then let at*, granted a lease of the capital messuage for twenty-one years, but reserved no rent. The question was, whether the capital messuage was demisable under this power? and the court held, that it was not. For the qualification annexed to the power of leasing, that *the ancient rent must be reserved*, manifestly excludes the mansion-house, and grounds about it, *never let*. No man could intend to authorize a tenant for life to deprive the representative of the family of the use of the mansion-house; therefore, the words in such a case shew, that the power was meant to extend only to what had been usually let. By that means the heir enjoys all the premises in the settlement, just as they were held and enjoyed by his ancestor, the tenant for life. He has the occupation of what was always occupied, and the rent of what was always let. The nature of the thing spoke the intent as forcibly as the most direct words would have done. It was demonstration.

Bagot v. Oughton, 8 Mod. 249. 381. Fost. 332.

Dougl. 574.

So, where a tenant for life under a will, with a power to let *all* or *any* part of the premises, *so as the usual rents* be reserved; and so as there should not be at any one time any greater or larger estate upon any one *tenement*, or part of a tenement so leased, than for three lives, or for ninety-nine years, determinable on lives, either in possession or reversion; and so as such lease or leases should not be made dishonourable of waste; granted a lease *of tithes which were never leased before the making of the will*; the court held that such lease was not warranted by the power, and therefore void. It was most manifestly the intent of the deviser, that nothing should be let, but what had been let before; that those who were to enjoy the estate after him, were to enjoy it in the same manner as he had done. In all cases on the construction of powers, the single point to be considered is, the intention of the creator of the power: that alone must govern.]

Pomeroy v. Partington, 3 Term Rep. 665.

[1 Burr. 120.]

If land hath been leased, by virtue of a contract, from year to year, for three years, this cannot be said to be usually let, because this is but one lease, though renewable every year.

2 Roll. 262.

[Lands were conveyed on a marriage to trustees and their heirs, to the use of one for life, remainder to his first and every other son in tail male, &c. with a proviso, "that it should be lawful for the tenant for life, and his wife, during their respective lives, and the son and sons of their respective bodies, and the heirs male of such son and sons, and the heirs male of tenant for life, as they should be severally and successively in possession of the freehold by virtue of the limitations aforesaid; and for the said trustees, and the survivors and survivor of them, and the heirs of such survivor, *during the minority* of any such son or sons, or issue male, at any time or times, by any deed or deeds to be signed and sealed by him or them respectively, in

Right v. Thomas, 3 Burr. 141. 1 Bl. Rep. 446.

" the presence of two or more credible witnesses, to demise, lease, &c. to any person, &c. either in possession or reversion for one life, or for two or three lives, &c. all or any part of the premises which *had been usually so demised and letten*, so as there should be no more than three lives in being at one time," &c. A lease was afterwards made by indenture, &c. bearing date the 24th of *June* 1742, between the trustees named in the settlement, (there being then a minority,) and J. S., of part of the premises, in consideration of a fine paid, a certain yearly rent, and a specific sum for a harriot. Several old leases of the premises were shewn, some in Queen *Elizabeth's* time, and others in that of *Henry 8th*; some for years, and others for ninety-nine years, determinable upon three lives; and among the rest, an indenture *tripartite* bearing date the 15th of *December* 1638, whereby one of the ancestors of the present tenant for life, seised in fee, in consideration of natural love and fatherly affection to his second son, and for his better advancement, livelihood, and maintenance, covenanted to stand seised to the use of himself for life, then of his second son, his executors, &c. for ninety-nine years, if his said son, or any woman he should marry, or any issue of his body, should so long live, paying unto the heirs and assigns of the father the yearly rent of 4*l.* payable quarterly; with covenants on the part of the son to pay the rent, and repair the premises. The question was, whether a covenant to stand seised could be considered as an evidence of the usual manner of demising? And by the court, it should. There is no doubt, but that these lands had been usually leased for lives; and the usual profits made by fines. A covenant to stand seised entered into by the owner of an estate, is a *lease*: and the objection, that the covenant to stand seised in question is by way of provision for a younger child, is of no weight; for it is every day's experience; nothing being so common as the making of these leases for the benefit of younger children.]

Co. 134. a. If a feoffment in fee be made to the use of *A.* for life, remainder to *B.* in tail, with power for *A.* to make leases reserving, or so that he reserve the accustomed rent, payable to all those who shall have the reversion or remainder; if *A.* make leases accordingly, these leases derive their essence out of the feoffment, and after they are made do, in point of time, precede all the other estate limited by that feoffment; so that the rent thereupon reserved, shall go, with the reversion or remainders thereby limited, as a rent properly so called, and not as a sum in gross; and therefore those in reversion or remainder may distrain, or have an action of debt for recovery of it, as if they were seised in fee, and had made such lease. And where one (a) book calls it a sum in gross, this is denied to be law in (b) another, and several books prove it a rent. But in (c) *Poph.* it is said to have been a doubt, in the Lord *Dyer's* time, if such leases should be good, unless there were a clause, that the feoffees, and their heirs, should stand seised to the use of such lessees; for which reason it may not perhaps still be amiss to insert such a clause, though such leases have ever since been held to be good without such clause; for since the same deed that

limits

139.
Poph. 81.
3 Co. 71. a.
And. 273.
Harcourt.
v. Poole.
2 Roll.
Abr. 261.
2 Jon. 35.

(a) Co. 110.
(b) In 2 Jon.
35., for
which is
cited And.
273.
2 Roll.
Abr. 261.
(c) Poph. 81.

Limits the estates to *A.* and *B.* gives *A.* power to make leases for such a determinate time, these leases cannot be derived out of the interest of *A.*, for that being but for his own life, is not commensurate to such leases, which at all events are to last for such a time; and if such leases were to determine at *A.*'s death, the power would be nugatory and idle, because without it he might have made such leases; but the power being to make leases which shall endure longer than the life of *A.*, these leases, when they are made, must be derived out of the same root as the estate of *A.* himself is, that is, out of the estate of the feoffees, who for that purpose have a kind of *scintilla juris* left in them, to serve such future leases when they are made, and by consequence, must be seised to the use of such lessees; and then the statute of 27 H. 8. c. 10. presently carries the possession accordingly; and the power, being coeval with the other estates, may well subject them to the execution thereof; since he who is master of his own estate, may dispose of it upon what terms he thinks fit.

But these leases can only be made by virtue of such powers upon estates executed by transmutation of possession: therefore, if one bargains and sells lands to another by indenture enrolled for the life of the bargainee, with power for the bargainee to make leases for three lives, or twenty-one years; yet this is of no effect to give him any such power; for here is no transmutation of the possession at law, but only a use raised by virtue of the consideration, to which the statute immediately carries a possession, according to that use; but for the residue of the estate, it continues wholly in the bargainor, as it was before; and then the persons who are to be the lessees being unknown, no consideration can arise from them to the bargainor, and by consequence, no other use can then be drawn out of him. And if the use does not arise at the time of the bargain and sale, it can never arise after; because when the deed is once perfected, its operation, as to creating any new or further interest, is then at an end, and consequently, no leases can be made upon such a conveyance, for want of a consideration to raise a use to the lessees.

So, if one covenants to stand seised to the use of himself for life, remainder to his wife for life, with divers remainders over, with a power for the covenantor, for divers good causes and considerations, to make leases for lives or years, &c. this power is perfectly void, so that he cannot by virtue thereof make leases, even to his sons or daughters, or any other of his blood, much less to strangers; because such general consideration can raise no use at all, and no averment of a particular consideration can help it, because his intent appears to be general, with regard to the persons to take such leases, as to the consideration whereon they are to be made; for his intent then was not to demise to one person more than to another; and since such leases are to arise and take their effect out of the estate of the covenantor, there must be a consideration to raise a use for that purpose at the time of the covenant made; which in this case there cannot be, *when neither the persons nor the consideration are known*: and if there be no con-

Poph. 81.

Mildmay's
case.
Co. 176.
Moor, 144.
372.
2 Roll.
Abr. 260.
Croft v.
Faulstich, Cro.
Jac. 180.
Baynes v.
Beison.
Raym. 247.
3 Keb. 309.

sideration to raise such use at the time of the covenant perfected, it can never arise after, because the further operation of the deed then ceases. But upon a *feoffment, fine, or recovery*, where the estate is *executed*, and a change of the possession made presently, there, no consideration is requisite to raise any of the uses; and then, by virtue of the power which is created at the same time with the conveyance itself, the lease may be made at any time after.

Chan. Ca.
101. 263-4.
Prince and
Green v.
Chandler.
40 Eliz.
3 Chan.
Ca. 91.
[Lord C. J.]
Treby, in
his argu-
ment in
Bath and
Montague's
case, assigns
the same
reason for supporting the lease.]

Godb. 327.
pl. 419.

And yet where one covenanted to stand seised to the use of himself for life, remainder to his eldest son, with power for himself to lease a small part for forty years, which he accordingly afterwards did, for a provision for a younger child; though at law this was not good, yet the Lord Chancellor *Egerton*, upon a bill in Chancery, decreed relief, because the son claimed by the same conveyance by which the power was limited, and the conveyance was intended to have been by livery, but that the father was advised such covenant to stand seised would do as well; and the law in *Mildmay's* case was not then adjudged; so that neither the party nor his counsel did then know but that such power was warranted by law.

A husband seised of lands in right of his wife, he and his wife levy a fine to the use of themselves for their lives, and after to the use of the heirs of the wife; proviso, that it shall and may be lawful to and for the said husband and wife, at any time during their lives, to make leases for twenty-one years, or three lives; and the wife being covert, made a lease for twenty-one years: it was adjudged a good lease against the husband, though made when she was a feme covert, and although it was made by her alone, by reason of the proviso. This is the case *verbatim*, as it is put in the book: but surely the reporter must be mistaken; for, as it is put, there appears no power for the wife solely to make leases, but only in conjunction with her husband; therefore the power must be intended for the wife solely, or for the husband and wife, or *either of them*; and then, no doubt, such lease by the wife alone will bind the husband, because it takes its essence *out of the fine*, to which both were parties and consenting.

Bayley v.
Warburton,
Com. Rep.
494.

[One seised in fee, on his marriage with a second wife, settled lands on himself for life, then on his wife for life, then on the issue of that marriage, then to the use of his eldest daughter by his former wife, and to the heirs of her body, &c. There was a proviso, that it should be lawful for the wife, *during her life*, to demise the premises to any person for such term, with and under such conditions, rents, and reservations, in such manner to all intents as tenant in tail may do by statute 32 H. 8. for the term of one, two, or three lives, upon and under such reservations and rents, and in such manner as tenant in tail was enabled to do by that statute. The husband died, and the wife married again, and she and her second husband demised the premises pursuant to the power. Two questions were made; first, whether the lease made by the husband and wife, when the power was given to the wife alone, were a good execu-
tion

tion of the power, or whether it were not suspended by the marriage? Secondly, whether this lease by the husband and wife ought not to have been made by fine? As to the first question, the court held, that this was a good execution notwithstanding the power. As to the second, that no fine was necessary; for the estate of the lessees was not derived from the lessors, but arose out of the estate of the feoffees or releasees named in the original settlement: that therefore, nothing more was requisite to the raising of an estate to the lessee, than what was required by the deed creating the power; which was only an indenture signed by the party making the lease, and made in such manner as the 32 H. 8. requires in leases by tenant in tail.]

A., seised of a reversion in fee expectant upon an estate for life to B., covenants to levy a fine, &c. to the use of himself for life, remainder to the use of himself in tail, &c. with power to A. to make any lease or leases in possession or reversion of all or any the premises, provided that such lease or leases do not exceed three lives at the most, or twenty-one years, and so as the accustomed rent be reserved, payable during such lease or leases: a fine is levied accordingly: then A. makes a lease to C. for ninety-nine years, if two lives should so long live, to begin after the death of B., rendering 14 l. *per annum* (the ancient rent) to him, his heirs and assigns, and to such person and persons to whom the inheritance shall after his death appertain; and if this was a good lease, pursuant to his power, was the question? It was adjudged that it was: because the first part of the power was to make leases absolutely and indefinitely, in possession or reversion, and the restraint which came after was only that they should not exceed three lives, or twenty-one years, which this lease does not; for though it is for ninety-nine years, yet it is determinable on two lives, which is less. Besides, the power being to make leases as well in reversion as in possession, and for lives as well as years, could not have been executed, as to making leases for lives, in any other manner; for they could not be made for lives in reversion, as they may for years determinable on lives; and a lease in such manner was most consonant to the nature of his estate, which was but a reversion after the estate for life to B. But the court agreed, that if one hath power generally to make leases for three lives, he cannot make a lease for ninety-nine years, if three lives so long live; for this is not pursuant to his power, which was only to make leases for three lives; and there being no other liberty given in the power, he cannot vary from it, because such powers being to charge the inheritance of a third person, are to be taken strictly. 2. It was adjudged, that the reservation was good, because such lease, after it is made, comes in by virtue of the power above all the limitations, and takes its essence, not out of the estate for life, but out of the estate of the conusees before all the other estates, and then they coming in after, in the nature of reversioners, the reservation to them is good.

It was said by the judges, in 3 Keb. that the construction in 3 Keb. 746: *Whitlock's case*, that a person, having power to make leases for

8 Co. 69, 70. 1
2 Roll. Abr.
260. Whit-
lock's case.
3 Mod.
268-9.
Lutwich
v. Pigott.

three lives, could not make a lease for ninety-nine years determinable on three lives, was too nice, and expressly contrary to the intent of the parties.

Mich.
8 Geo. 2.
Rattle v.
Popham,
in B. R.
2 Stra. 902.
[(a) The
widow after-
wards filed
her bill in
Chancery ;
and Lord
Talbot held
the lease to
be warrant-
ed by the
power, say-
ing, that it
was not a
defective,
but a blun-
dering execu-
tion, and
he decreed the defendant to pay all the costs both at law and in equity. 2 Burr. 1147. 2 Vez. 644. And note, in the case of Zouch v. Woolston, 2 Burr. 1147. the court of King's Bench were of opinion, that whatever is an equitable, ought to be deemed a legal execution of a power.] (b) 8 Co. 70. Ley. 74. Co. 45. S. Rule laid down.

Yet in a late case, where *A.* made a settlement, and limited the estate to himself for life, remainder to his son *B.* for life, with several remainders over, with a power to *B.* when he came into possession, *to assign or limit the same to any woman that he should marry, or for the use or in trust for her*, in lieu of her jointure ; *B.* on his intermarriage, by deed reciting his power, demised the estate to trustees for ninety-nine years, in trust for her, if she should so long live : though it was agreed, that this was no greater estate than by the power he was enabled to make, being to determine on her death, and that an estate for years was, in the eye of the law, of shorter duration than an estate for life ; yet it was resolved, that the power being positive, and specifying what estate was to be limited, ought to be construed and pursued strictly, being to arise out of the estate of a third person (a) : and they agreed the rule laid down in (b) *Whitlock's* case, that all positive particular powers must, in all material circumstances, be positively and particularly pursued.

3 Keb. 44.
Allop v.
Pine.

One had power in effect to make leases for the lives of *A.*, *B.*, and *C.*, and he makes a lease to them for three lives, and the life of the longer liver of them : this was held to be sufficient within the power, because for three lives generally, and for three lives and the longer liver of them, is all one, since without such words it would have gone to the survivor.

2 Bulf. 216.
Cro. Jac.
347. Roll.
Rep. 12.
2 Roll.
Abr. 260.
Fox v.
Prickwood.

Tenant in fee makes a lease for life, and after levies a fine to the use of *J. S.* for fifteen years, remainder to the use of himself for life, with power for himself to make leases for twenty-one years, or three lives in possession ; and the question was, if by virtue of this power he might make leases during the continuance of the term for fifteen years, or not till after that was ended ? and *per curiam* clearly, he may make leases presently in possession ; for the power issues out of the whole estate, and by virtue thereof he may make leases in possession presently, and need not stay till the term end, or the lands come into possession ; and the termor shall have the rent reserved thereon : and they agreed, that, as this power was, he could not make leases in reversion, but the term of fifteen years was immediately subject to the power, and when that is executed it will charge the possession.

Palm. 468.
Cro. Eliz. 5.
6 Co. 33.
Leon. 35.
3 Leon. 130.
4 Leon. 64.
Moor, 199.
Poph. 9.
Yelv. 222.

Tenant for life, with power to make leases for twenty-one years, rendering the ancient rent, makes a lease for twenty-one years, to begin such a day after : this is not pursuant to the power, and consequently void, because *pro tempore* it is a future lease, which this power does not warrant, but it ought to be made in possession ; for if he might make leases in reversion, or *in futura*, though but a month after, he may as well make them to begin twenty

twenty years after, or after his death, and so defeat the intent of the power, which being to charge the estates of third persons, is to be taken strictly.

But where a husband, seised of lands in right of his wife, made a lease for twenty-one years pursuant to 32 H. 8. c. 28. and after, by a private act of parliament it was enacted, that the husband should have those lands for his life, remainder to his wife for life, and that all leases and grants thereof made or to be made by the husband for three lives, or twenty-one years, reserving the ancient rent, should be good; and the husband after made a lease of these lands, to begin after the expiration of the first lease; it was held good; for the lands being in lease at the time of the making of the act, the intent of the act seems to warrant such lease in reversion, and the rather, because there was no restraint from making leases in reversion, as there is in 32 H. 8. c. 28. which seems implicitly to give a power of leasing them in reversion: but they agreed, that if the lands had not been in lease at the time of making the act, or if a lease had been made in possession pursuant to the act, the husband could not in either of these cases have made a lease in reversion, or to begin at a future time; because then the power might well be executed by making leases in possession, which here, having but a reversion himself, he could not. It was also held, that a commission from the queen to make leases for twenty-one years, to save her the trouble of making them, would not warrant leases in reversion.

[So, tenant for life of the reversion of lands that were in lease for lives, by virtue of a power under a settlement, (providing "that it should be lawful for every person who should be actually "seised of the freehold of the premises limited in use, to make "leases of any part thereof which had been usually letten for lives "or years, of which he should be so actually seised by virtue of "the limitations aforesaid, by indenture, for any term not exceeding twenty-one years, or determinable on one, two, or three "lives, &c. so as there were not in any part of the premises so "leased at any one time, any more or greater estate or estates "than for twenty-one years or three lives, or for any number of "years determinable upon three lives,") made several leases for ninety-nine, to commence from the death of a remaining life in a former lease. And the question was, if these leases were pursuant to the power? It was objected, that they were leases in reversion. But it was answered, that when a man made a settlement of the *reversion* of lands *demised* for life or years to the use of one for life, with power to make leases *generally*, he may make a lease during the continuance of a former lease, to commence after the former, as otherwise his power would be ineffectual.

However, where C. under a power to make leases for one, two, or three lives, or for twenty-one years, reserving the ancient rent, demised to B. for twenty-one years, to commence after the death of I. and M., who were tenants for life at the time of making the settlement, and who lived for several years after; it was holden, that

Cro. Jsc.
318. 2 Roll.
Abr. 267.
Raym. 247.
Dyer, 357.
Leon. 36.
3 Leon. 71.
4 Leon. 66.
2 Roll.
Abr. 268.

Coventry v.
Coventry,
Com. Rep.
312.

Baynes v.
Belfon, Sir
T. Raym.
247. But
this case did
not receive
a decision,

but was adjudged, other questions arising therein. And it is observable, that the court are stated by the reporter, to have founded their resolution on this point on the case of *Slocomb v. Hawkins*, as reported in *Yelverton*, 222., and on that of *Suffex v. Wroth*, as cited 2 Roll. Abr. 261. and 6 Co. 33., both of which cases, as cited in the reporters referred to, apply only where reversionary leases are made under a power attaching upon estates in possession. Pow. on Powers, 419.

2 Roll. Abr. 261. *Hele v. Green*, adjudged on a special verdict.

One possessed of a manor for ninety-nine years, by his will devises it to *A.* his wife for her life, with power to let, set, or make estates out of it, and that in as ample manner as I myself might, if I were living; and after the death of *A.* he devises it to *B.* his daughter, and the heirs of her body begotten, and dies, and *A.* being his executrix, consents to the devise, and after makes a lease of part of the said manor to *C.* for ninety-nine years, if three lives so long live, and dies: this was adjudged a good lease against *B.* the daughter; though it was objected, that she had power to dispose of it only during her own life, because otherwise she might defeat the remainder limited to the daughter. But the court held, that the disposition made by her should continue after her death, otherwise the power would be merely idle, since without it she might have disposed of it during her own life.

Lev. 176. Sid. 260. Raym. 132. Keb. 778. 910. *Opey v. Thomas*; & vide Chan. Ca. 17.

One seised of lands in fee makes a lease for ninety-nine years, if three lives should so long live, and after settles the reversion on himself in tail, with power to make leases for one, two, or three lives, or for twenty-one years in possession; and after he makes a lease for twenty-one years, to begin after the expiration of the first lease; and if this was pursuant to his power, was the question?

And the court agreed, that where tenant in possession makes a settlement with power to make leases generally, there, he can only make leases in possession; but where he that makes the settlement had only a reversion at the time, there, he may make leases out of that reversion; for that agrees with the intention of the parties, which is to be the guide in the construction of all such powers: but here, the power being expressly to make leases in possession, this lease, which was of the reversion only, is not within the power, as the court seemed to agree; though it was urged, that a lease in presenti of the reversion was consonant to the intent of the parties, and such a lease in possession as the nature of his estate would admit of; *ideo quare?* And note, the case of *Slocomb and Hawkins*, as it is reported in *Cro. Jac.* seems to impeach the diversity agreed on by the court; for there it is put, that tenant in fee of a manor, which was then in lease for years, levies a fine thereof to the use of himself for life, remainder to his eldest son in tail, with power for the tenant for life to make leases at any time for twenty-one years; and before the first lease expired the tenant for life made a lease for twenty-one years, to begin after the determination of the first lease, and died; and though the settlement itself was of a reversion, and the power general, yet this lease in reversion was adjudged void; for that, as the court said, it ought to have been a lease in possession: but *Yelverton*, who reports the

Cro. Jac. 518. *Slocomb v. Hawkins*, *Yelv.* 222. S. C.

same

same case, mentions it as a settlement of lands in possession, and that the tenant for life made a lease for twenty-one years, and after, before the expiration thereof, made another lease for twenty-one years, to begin after the expiration of the first lease; and this second lease was adjudged clearly void, and contrary to the meaning of the power.

Devisee for life, with power to make leases for twenty-one years, whereupon the old accustomed yearly rent shall be reserved, makes a lease for twenty-one years, under the old rent, &c. and a year before the expiration of that lease he makes a lease to another for twenty-one years, *to begin presently*: this lease seems to be good within his power as a concurrent lease, because it is no charge upon the reversion, nor is there any more than twenty-one years *in toto* against the reversioner; but this power would not warrant the making of leases in reversion; for then he might charge the inheritance *ad infinitum*.

Leon. 147-
8. Read.
and Nash.

[Lord *Ferrers* was tenant for life under a settlement in which there was a power, for the tenants for life, *respectively*, when they should respectively come into and be in actual possession of the premises settled, by indentures under their hands and seals, to demise all or any of the said premises, or any part thereof, in possession, but not by way of reversion or future interest, &c. Part of the premises subject to the power were let by the agent for the tenant for life by agreement in writing, from the 15th *March* 1775, to occupy till the 10th *March* 1776, to three persons, and the rest was at the time of the lease in the occupation of tenants at will. Afterwards, on the 17th of *August* 1775, Lord *Ferrers*, by indenture, reciting the power, demised part of the premises to the defendant for ninety-nine years, from *Lady-day* then last, if she should so long live, at the yearly rent of, &c. It was objected to this lease upon motion for a new trial, (the defendant, the lessee, having gotten a verdict in ejectment brought by the remainderman to recover the premises leased,) that it was a lease in reversion, and therefore, contrary to the power and void; for it was contended that Lord *Ferrers*, at the time of this demise, could not grant an immediate lease in possession, because part of the premises were then let, under an express agreement, for a term, of which several months were then to run; and though the rest was stated to have been in the hands of tenants at will, yet, as the law then stood, they must be considered as tenants from year to year, and entitled to six months notice. Lord *Ferrers*, it was insisted, could not have brought an ejectment against any of them at the time of the demise, and therefore had no immediate possessory right; such right, and the right to recover in ejectment being convertible. It made no difference to this question, that the subsisting leases were not by deed, since a parol lease for three years, or less, was equally effectual with a lease by indenture; and the court could not draw the line, and say, that a lease granted under a power like the present, should be good although there was a subsisting term of *seven months* at the time of granting it; but should be void if there was a subsisting term for *seven years*: the legislature only, or the parties could

Goodtitle v.
Funucan,
Doug. 565.
See the
power at
large *supra*,
146.

could draw such a line. Sir Orlando Bridgman, the father of conveyancers, and who probably invented these powers, laid it down, it was said, that all leases, where there was a particular estate out, were leases in reversion. And the interposition of the legislature in 4 Geo. 2. c. 28. § 6. to enable landlords to renew leases for lives, although the under-tenants should not likewise surrender, corroborated this doctrine. But it was answered by the other side; first, that the tenants assented to this lease, and surrendered their possession before the execution of it, in order to make it valid. This had been expressly left by the judge to the jury, who found that the defendant was in possession at the time of the execution. Secondly, that if the jury had not found the lessee to have been in possession, *still this would be good as a concurrent lease*: for this *Read v. Nash* was cited, and the reason there given for supporting the lease was said to be a strong one; namely, that the inheritance was not charged in the whole with more than twenty-one years. No authority, it was said, had been cited against this case, nor any answer given to the reasoning in it. Thirdly, that, in respect of the power, all the subsisting leases were leases at will; there was no outstanding lease as against the remainder-man; he would not have been bound to give the tenants notice to quit, but might have entered upon them immediately; for, except in the case of leases under the power, (and these were not in many respects according to it,) the possession would devolve upon him the instant of the death of the tenant for life. And for these reasons, the court unanimously held the lease to be good, notwithstanding this objection.]

9 Co. 76. a.
Roll. Abr.
330.

Tenant for life, with power to make leases for three lives, or twenty-one years, cannot make such leases by letter of attorney, by virtue of his power; because such leases not being derived out of the interest of the tenant for life, but by an authority derived from the tenant in fee, and to charge the estate of third persons, the trust for that purpose is personal, and cannot be delegated to another.

Noy, 66.
Cook v.
Bromehill.

A. makes a lease to *B.* for life, and after levies a fine to the use of *C.* for life, remainder to himself in fee, with a proviso or power to make leases for twenty-one years, or three lives, and that the conusees should stand seised to such uses; afterwards *A.* covenants to stand seised to the use of *D.* in tail, with divers remainders over, and after grants the reversion aforesaid to *E.* for life, who distrains *B.* and avows; and judgment was given against the avowant; because by the covenant to stand seised, &c. *A.* had destroyed his power of making leases, and, by consequence, the grant to *E.* not being derived thereout, could not affect any of the preceding estates.

1 Chan. Ca.
23. Pawcy
and Bowen.

One hath power to make a lease for ten years, and he makes a lease for twenty years; yet in equity this is good for ten years, and so it has been settled several times.

Chan. Ca.
10. Pollard
v. Greenwill.

One having power to make leases for twenty-one years in possession, made a lease to *A.* for twenty-one years in trust for the payment of debts; but the lease was made to commence from a time

time to come, and so not pursuant to the power; yet, being made for the payment of debts, was supported in equity.

[Tenant for life of estates situate in *Ireland*, with full power of making leases for any term not exceeding thirty-one years or three lives, to commence in possession, at the best improved rent that could be had for the same, made a lease "*from the date for and during the natural life and lives of three persons and the longest liver of them, or, for the term, time, and space of thirty-one years, to commence from the date, which should last longest, from thenceforth next ensuing, fully to be complete and ended.*" On an ejectment brought, in the court of Exchequer in *Ireland*, by the heir at law and remainder-man, and a special verdict returned thereon, the question was, whether this lease was good within the terms of the power? On argument before the barons, it was adjudged that it was good, which judgment was affirmed on a writ of error in the Exchequer-chamber there, before the Lord Chancellor of *Ireland*, assisted by Lord *Annaly*, the Chief Justice of the court of King's Bench, the constituent members of that court. But Lord *Annaly* having delivered his opinion for reversing the judgment, a writ of error was brought in parliament. It was there argued on the part of the remainder-man, that the lease was bad, for that it was in manifest opposition to the power; because, instead of being a lease for one or other of the terms expressly, as the power directed, it was a lease for the one or the other as chance should direct; and that he, being a purchaser for the most valuable of considerations, had a clear right to exact a strict performance of the condition annexed to his father's power of leasing. But it was contended on the other side, that, in cases of this kind, all a remainder-man could reasonably expect was, that an estate, when it came to him, should not be charged beyond what it was the intention of the settler to allow those who stood before him to charge it. That it would not be so by the lease in question, if it were construed as a good lease for three lives, and no longer. That courts of law, who, in modern times, had adopted the same rules of construction which prevailed in courts of equity, in the construction of powers and of the instruments by which they were executed, would, when they had been exceeded, correct the excess, and support the execution so far as it was warranted by the power. That the lease in question, so far as it was a lease for three lives, was clearly warranted by the power; and this was apparently the primary object of the parties. Besides this, they had a second object in view, which was to secure the estate to the lessee for thirty-one years, in case the lease for lives should determine sooner. But this, whether it was considered as concurrent or contingent, was not warranted by the power.—The lease was adjudged good; and the judgment affirmed.]

Commons
v. Marshall, 7 Br.
P. C. 112.

If one makes a feoffment in fee to the use of himself for life, with power to demise, lease, grant, or devise the lands for three lives, or twenty-one years, yet this gives him no other power in effect than to limit the use of the land for three lives, or twenty-one years; for all leases to be made by him by virtue of such power

Moor, 514.
611. 645.
2 Lev. 149.
Vent. 291.
3 Keb. 512.
accord. that
it is the best

way to make
no livery ;
but Hale
thought it
no forfeit-
ure, because
by the seal-
ing of the
deed the
lease takes
effect, and
then the
livery comes
too late.

power take their essence out of the original feoffment : therefore, if he makes a lease for three lives, and makes livery of the land, this is a forfeiture of his own estate for life ; because he himself being only tenant for life, cannot out of that estate make such leases ; and when he takes upon him to make livery of the land, he takes upon him to make the lease as owner of an estate sufficient for that purpose, which he is not ; and to make such leases no livery is requisite, because they taking effect out of the first feoffment, the livery made upon that is sufficient to supply all the future limitations to be made in pursuance thereof. But if he pursues the words of the power, and says only, *I demise or lease such lands to you for three lives*, this is sufficient, and will be taken in execution of the power a good lease for three lives. So, if he only says, *I limit the use to you for three lives*, &c. this likewise is sufficient, because this in effect is the substance of his power, and the statute presently carries the possession after such use. So, if one hath power only to limit new uses, and he gives or devises, &c. the land itself, this is also good, and enures to a limitation of the use, because the use is but an equity to have the land itself, and when he gives, demises, or devises the land itself, he also gives all his use and equity therein, and then the statute executes the possession accordingly.

Carth. 427-
8. 2 Saik.
537. pl. 1.
5 Mod. 244.
378. Ld.
Raym. 267.
Comyns, 37.
pl. 25.
Winter v.
Loveday.

It was found by a special verdict, that *A.*, being seised of the manor of *M.*, did, on his son's marriage, settle the same to the use of himself for life, and after to the use of his wife for life, then to the son in tail, with the following proviso or power ; viz. *That it should be lawful for the said A. during his life, and for his wife, after his death, during her life, by deed indented to make leases, either in possession for the term of one, two, or three lives, or for the term of thirty-one years, or for any other term or terms, number or numbers of years, determinable upon one, two, or three lives, or in reversion for one or two lives, or for thirty years, or for any other term or number of years, determinable upon one or two lives ; so as such demise be not made of any the ancient demesne lands, parcel of the said manor, or of any other lands which for the space of seven years have been used as demesne lands, and so as the ancient rent be reserved ; afterwards A. by deed makes an absolute lease for thirty years of copyhold lands, parcel of the same manor, which were in the tenure of J. S. for the term of two lives, to commence after the two lives then in being. And in this case it was held by Holt, Chief Justice, Turton and Eyre Justices, contra Rokeby, 1. That a lease of copyhold lands was not warranted by the power, being within the exception of ancient demesne lands, all copyhold lands being ancient demesne, it being an inseparable quality of every copyhold, that it was time out of mind parcel of the manor. 2. It was held by the said justices, against Rokeby, that a lease for thirty years absolute in reversion after two lives, might be made by *A.* or his wife of any lands which were in their power of leasing ; and herein Holt held, that a lease to commence at any day to come, is properly a lease in reversion ; but in this case it signifies a lease to commence after some interest in being at that very time when the lease in reversion was*

made; that this power to lease for life in reversion must be taken to be a lease of the reversion itself, and not a concurrent lease, and that it cannot be otherwise, because a freehold cannot commence *in futuro*; and where there is a power given to make leases in possession and reversion, in such case if a lease is made in possession, and afterwards some life drops, he cannot make a new lease in reversion of the same lands, because his power is executed by making the first lease: that where a qualification is annexed to a power of leasing, which, if observed, goes in destruction of the power, the law will dispense with such qualification; as where there is a power to make a lease of a manor, or of any part thereof, so as the ancient rent be reserved, yet he may by this power make a lease of the services, parcel of the manor, upon which no rent can be reserved; otherwise the express power would be defeated.

A man made a voluntary settlement on his son for life, and after to his first and other sons in tail, with power to the son to make a lease in possession for ninety-nine years, determinable on three lives, and also to make leases for sixty years, to commence after his death, if he had issue male, to continue so long as he had issue male: the son makes a lease to his father in trust for one of his younger children, but the lease was not pursuant to the power; yet it was decreed good, and taken to be a lease made by the father after a voluntary settlement.

Abr. Eq.
342.
Gooding v.
Gooding.

[The Duke of Montague was tenant for life, without impeachment of waste, with power to lease "reserving ancient and accustomed rents, heriots, boons, and services," under which power he granted several leases. In the former leases, the tenants covenanted "to keep in repair:" in those granted by the duke that covenant was omitted. The Lord Chancellor, after taking some days to consider of it, was of opinion, that that covenant was a boon, and beneficial to the remainder-man; and held these leases void for want of it. He said, that he was clear upon the argument; but he took time, because there was no case in point. The more he thought of it, the more he was convinced. The principle he rested upon, was, "*that the estate must come to the remainder-man in as beneficial a manner, as ancient holders held it.*"

Earl of Cardigan v. Montague, 6th June 1755, cited in 1 Burr. 122.

Under a power requiring the best rent that can be reasonably gotten, to be reserved payable during the term, there must be a covenant for payment; for under a mere reservation, it is not payable till entry; and therefore, in fact, may never be payable during the term. Besides, if there be no covenant to pay the rent, the lease may be assigned to a succession of beggars. There must also be a clause of re-entry; else the ground may be unoccupied without any, or at least a sufficient distress upon it, so that the remainder-man can neither have his rent nor his land. The want of a counterpart too is an unusual omission, and very prejudicial.

Taylor v. Horde, 1 Burr. 125.

But if the covenants be upon the whole such as leave the parties on the same footing as under former leases, their differing in trifling circumstances will not be material. Thus, it was objected

Pow. on Powers, 579.
Goodtitle

to

v. Funucan,
Doug. 505.
supra, 146.

to the covenants in the lease from Earl *Ferrers* to Mrs. *Funucan*, (by one of which she covenanted, that she would pay half the land-tax, amounting to 7*l.* 10*s.* by the other of which the earl covenanted for himself, his heirs, &c. to free her from tithes and from levies and payments to the church,) that the covenants in the lease were not so beneficial to the remainder-man, as those in the ancient leases; for that in the former leases, the tenants covenanted to pay all duties and taxes, except the land-tax; that church dues were particularly, by law, chargeable on the occupier; but by that lease the landlord covenanted to free the tenant from tithes and all levies and payments of the church. The new covenants were therefore less beneficial to the remainder-man, than those in the former leases. By the court—The power made no mention of covenants. The *ground*, therefore, must be, that the present covenants were a fraud on the power, by lessening the value of the reservation; but on considering them fully, it appeared, that what is thrown on the landlord was compensated by what was paid by the tenant. She was to pay half the land-tax. As to the church-dues, the covenant seems to be collateral, and not to go with the land, or to bind the remainder-man, resembling a covenant for quiet enjoyment. But if it did go with the land, there was no pretence of fraud on the power; the 30*l.* were, *bonâ fide*, reserved as an ancient rent. What was stipulated with regard to tithes was of no consequence, since none were payable.

Doe v.
Sandham,
1 Term
Rep. 705.

As under a power to lease *reserving the usual covenants*, the omission of a usual covenant will vacate the lease, so the introduction of an unusual covenant in such case will have the same effect. Thus, where a tenant for life made a lease under a power in those terms, containing a proviso, "that in case the premises were blown down or burned, the lessor, or the persons who for the time being should be entitled to the freehold and inheritance, should re-build, otherwise the rent should cease," the lease was adjudged to be void; the jury having expressly found such covenant to be unusual.

Lord Mans-
field, Burr.
224.

It is no objection to a lease under a power "that it is in trust for him who executes the power," provided the *legal* tenant be bound, during the term, in all requisite covenants and conditions.]

(K) By what Form of Words Leases may be made.

HERE it may be laid down for a rule, that whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession, and the other come into it for such a determinate time, such words, whether they run in the form of a licence, covenant, or agreement, are of themselves sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose; and on the contrary, if the

most

most proper and authentick form of words whereby to describe and pass a present lease for years, are made use of, yet if upon the whole deed there appears no such intent, but that they are only preparatory and relative to a future lease to be made, the law will rather do violence to the words, than break through the intent of the parties: for a lease for years being no other than a contract for the possession and profits of the lands on the one side, and a recompence of rent or other income on the other, if the words made use of are sufficient to prove such a contract, in what form soever they are introduced, or however variously applicable, the law calls in the intent of the parties, and models and governs the words accordingly.

My Lord Coke tells us, that the words *demise, grant, betake*, and *to farm-let*, and whatever other words amount to a grant, may serve for a lease for years. Co. Lit. 45. b. 2 Mod. 250.

So, he says, *dedi* is a sufficient word to make a lease for years. Co. Lit. 301. b.

But there are several other words which are equally sufficient to make a lease for years; therefore in case of the king, if he makes a lease for years, under the Exchequer seal, in these words; *sciatis quod nos commisimus custodiam* of such land to such a one, this is a good lease, and the lessee may plead it as a demise or lease of the land itself; for this sufficiently shews the intent of the king to part with the possession of the land for the time, and therefore amounts to an effectual lease; and this being the usage in the Exchequer, all other courts are bound to take notice thereof. Bro. tit. Leases, 71. 4 Inst. 111, 112. Co. Lit. 45. b. 2 Co. 17. a.

So, if one only licence another to enjoy such a house or land till such a time, this amounts to a present and certain lease or interest for that time, and may be pleaded as such, though it may be also pleaded as a licence; and if it be pleaded as a lease for years and traversed, the lessee may give the licence in evidence to prove it. 5 H. 7. 1. Leon. 129. 3 Bulf. 252. Sid. 428. Mod. 14. 2 Keb. 561. 2 Lev. 194. 3 Keb. 761. Hard. 366.

[So, where the owner of a house and brew-house, entered into partnership, and assigned one-fifth, and covenanted that the partner should reside in the house, &c. it was holden, that he could not maintain an ejectment against the partner contrary to his own agreement. Besides, that as a licence to inhabit, it amounted to a lease.] Right v. Proctor, 4 Burr. 2208.

So, if *A.* by articles covenants with *B.* that he shall have or enjoy such land for such a time, this is a good and effectual present lease, because here are sufficient words to prove a contract, that the one shall relinquish the possession, and the other come into it. But if the covenant had been with *B.*, that *C.* a third person should have or enjoy such lands of *A.* for such a time, or that the executors of *B.* should have or enjoy it for that time, this would be no lease to *C.* or the executors of *B.*, but only a bare covenant with *B.*: for when these words have their natural and binding force as a covenant with *B.*, they cannot at the same time have a different construction, and amount to a lease to *C.* or the executors of *B.*, who are strangers to the contract and no parties to the deed, and when those executors of *B.* are not yet

Leon. 136. 303. Cro. Eliz. 1. 173. Owen, 97. Roll. Abr. 847. 3 Bulf. 252. Fitz. tit. Affize, pl. 412.

in esse; neither can these words amount to a lease to *B.*, because the intent is manifest that he himself is to have nothing in the land, but is only a trustee of the covenant for *C.* or his executors. And further, if these words should amount to a lease to *C.* or the executors of *B.*, when they came *in esse*, this would take off from their operation as a covenant with *B.*; for the same words cannot at the same time have two different constructions and operations; and it cannot be said they are a covenant with *B.* by the first words, and a lease to *C.* or the executors of *B.* by the last words; for that *C.* or the executors of *B.* shall enjoy the land, is the very explanation of the covenant with *B.*, and gives life and force to it, and without that he covenants with *B.* for nothing; for till these words are added, the covenant with *B.* is but a dead letter, and has no meaning or sense in it.

Bro. tit.
Leases, 20.
30. 60.
Noy, 14.
Cro. Jac.
42. 659.
Palm. 201.
Leon. 118,
119.
3 Bull. 251.
Cro. Car.
207.
Jon. 231.
Hob. 35.
Moor, 861.
2 Brownl.
23. Roll.
Rep. 397.
3 Bull. 204.
Roll. Abr.
347.
Yelv. 85.
Brownl. 136.
Cro. Eliz.
223. Bro.
tit. Leases,
21. only
cont. per
Fineux.

So, where one by articles covenants, grants, and agrees with *J. S.* that he shall have such lands, or have, hold, and enjoy such lands for so many years, these are words sufficient to shew a present contract for the lessee's enjoying of these lands, and therefore amount to a present lease of them as effectually as if there had been the words *dimisit, locavit*, or such like: and though there were in the same articles a covenant to make a good and perfect lease, as counsel should advise, yet that would not prevent or destroy the operation of the first words as a present lease; such covenant only being *in majorem cautelam*, that the lessee might require further assurance by fine, or the like, if he found it necessary. And the difference is, where such articles, by way of covenant, are made by him who is owner of the lands; and where they are made by a stranger, or one who has then nothing in the lands: in the first case, they amount to a present and absolute lease; but not in the other, because a man cannot be supposed to lease what he has not: or if it might be so supposed, yet when it appears in the very articles that he has nothing in the lands, his covenant then can have no other construction, but that he will procure the owner of the lands to permit the covenantee to hold and enjoy those lands; which is the proper and natural interpretation of the words of the covenant, when he himself has nothing whereof to make a lease.

Cro. Eliz.
233.
Leon. 104.
Trustloe and
Yewer.
2 Keb. 268.

A controversy was between two persons touching a lease for years, which of them had title to it, and they submitted to the award of *J. S.*, who awarded that one of them should have the land; this was held to be a good gift of the interest of the land, that is, an award, that the whole lease, or interest in the land for the term then to come, belonged to one, exclusively of the other. But if the award had been, that the one should permit the other to enjoy the term, this, it is said, would not have given him the interest in the land, nor would amount to a lease; that is, as I suppose, because the permission being to come from the other party, the interest must be supposed to be and continue in him; and therefore it could not amount to a lease, or an award of a lease: not to a lease, either from the arbitrator or the other; not from the arbitrator, because he had nothing in the land, and

was

was only to award what the other should do; not to a lease from the other, because it was only the act and award of the arbitrator: neither could it amount to an award of a lease from the other, because it was only that he should permit the other to enjoy the term, which he might do without making a lease; and the words being spoken by the arbitrator, who was a third person, cannot have the same operation, as if they had been spoken by one who had interest in the lands, but must be taken according to the literal sense and meaning thereof.

Articles indented in writing were made between *A.* and *B.* in this manner: *Imprimis*, it is covenanted and agreed between the parties, that *A.* doth let such lands for and during five years, to begin at *Mich.* next following, under 10*l.* a-year rent; or provided that the lessee shall pay 10*l.* at *Mich.* and *Lady-day*, by even portions, during the term: also the said parties do covenant, that a lease shall be made and sealed, according to the effect of these articles, before the feast of *All-Saints* next ensuing: this was held to amount to an immediate lease, by reason of the first words in the present tense, and that the last words were only for making such a lease in writing for further assurance; and the rather here, because the lease to be sealed was to be made after the beginning of the term.

One said to another, "*you shall have a lease of my lands in D. for twenty-one years, paying therefore 10*l.* per ann., make a lease in writing, and I will seal it:*" this was agreed by all the justices to be a good parol lease for twenty-one years, though no writing was made of it, (being before the statute of frauds,) for the intent of the parties was sufficiently expressed, and the making of it in writing was but for further assurance, and left to the lessee, if he thought it necessary.

One made his will in this manner: "*I have made a lease to J. S. for term of twenty-one years, paying but 20*s.* rent:*" this was held a good lease or devise by the will for twenty-one years, and that the word *have* should be taken in the present tense, as *dedi* is in a deed of feoffment, to comply with the intent of the testator.

[On the 28th of Nov. 1760, *John Abrahall* and *P. Lloyd* entered into an agreement (stamped with a two shillings and fixpenny stamp) with the defendant *Browne*, whereby they agreed, "with all convenient speed to grant to him a lease of, and they "did thereby set and let to him," the premises in question, to hold for twenty-one years, at the rent of 290*l.* per ann. payable half-yearly "to the lessors:" the lease to contain the usual covenants, and certain special ones, in one of which the words "*this demise*" occurred. The defendant entered in pursuance of the agreement, and paid rent up to the 1st of *March* 1774. The court held, that this was a good lease *in presenti*, with an agreement to execute a more formal and perfect lease *in futuro*. The operative words *let* and *set* are in the present tense. A reference is also made to *this demise*. There have been fourteen years uninterrupted occupation under it, and five or six of them since the title of the lessor

Cro. Eliz.
486. Moor,
pl. 628.
Roll. Abr.
847.
2 Roll.
Abr. 449.
Palm. 201.

2 Bendl. 7.
Moor, pl.
31. Cro.
Eliz. 33.
306.

2 Bendl. 34.

Baxter v.
Browne,
2 Bl. Rep.
973.

Leases and Terms for years.

of the plaintiff accrued. He has accepted rent, and thereby given the defendant every reasonable hope of acquiescence. Under such circumstances, if the words of this lease can import an immediate legal demise, the court will support it as such; and that they will, is evident from the cases cited, viz. 1 Roll. Abr. 847.

Bury v.
No. 111.
Term
Rep. 105.
in or
from the
land.

In ejectment, the lessor of the plaintiff derived title from the defendant under an instrument, purporting to be a demise for twenty-one years of the premises in question. The instrument was as follows: "Be it remembered that J. B. (the defendant) hath let, and by these presents doth demise, &c. unto R. F. &c. for twenty-one years to commence after the 5th of May or 1st November, whichever first happens after the said J. B. recovers the said lands from M. O. The said R. F. covenanting and agreeing on the foregoing conditions to pay J. B. 100 l. yearly and every year during the said term, &c.; leases with power of distress, and clauses for re-entering, &c. and signed at the request of either party as soon as J. B. recovers the said lands from M. O." J. B. recovered the lands from M. O. and was then in possession of them. The court were clearly of opinion, that the instrument operated as a present demise, and that the agreement for a more formal lease was merely in further assurance.]

Where
words of
covenant,
&c. will
not, in the
case of cu-
pyholds
amount to
a lease so as
to work a
forfeiture,

Nov. 128.
Sourgeon
v. Painter.

But now, on the contrary, if the most proper form of words of leasing are made use of, yet if, upon the whole deed, there appears no such intent, but that it is only preparatory and relative to a future lease to be made, the law will rather do violence to the words, than break through the intent was manifestly otherwise.

Therefore, where articles were drawn between A. and B. in this manner: Articles agreed upon, &c. *Imprimis*, A. doth demise such a close to B. to have it for forty years, and a rent reserved, with a clause of distress, &c. In witness whereof, &c. and afterwards there was written in the same paper a memorandum, that these articles are to be ordered by counsel of both parties, according to the due form of law: here, because the intent of both parties appeared by that memorandum, and by a lease actually drawn by counsel, but never sealed, (upon some disagreement between the parties,) it was ruled by the court, upon evidence in the jury found that these articles were not a sufficient lease, and the jury found accordingly; and yet here was the form and words of a present and immediate demise or lease.

11. Abr.
t. Plea-
e and
am.
1. 81.

So, where articles are drawn between A. and B. in this manner: first, the said A. is contented to demise such lands, &c. to the said B. from Mich. *per ann.* a re-entry for non-payment of the rent, a covenant for reparations, and a covenant to do such other things; and these articles are sealed and delivered

b-

by the parties: yet they do not amount to a lease, but are only preparatory covenants or instructions towards a lease, and never were intended to have the force or effect of a lease themselves; besides that, the word *contented* imports only an approbation of something to be done after. This case is cited in (a) *Cro. Jac.* (a) *Cro. Jac.* 172. in this manner: that if one covenants and grants with another that he shall *have and hold* such lands for ten years, that this is a good and absolute lease for that time; but if he covenants and grants that he shall *enjoy* those lands for ten years, this is no lease, because it sounds only in covenant. *Quere* of the difference between *holding* and *enjoying*, for there seems none; therefore the case must be mistaken.

[On the trial of an ejectment the defendant produced in evidence a lease, as he stated, of the premises in question, but which appeared to be an agreement upon paper, *unstamped*, and not under seal, between the Earl of *Abingdon*, under whom the lessor of the plaintiff claimed, and the defendant's father. In the subsequent part of it were these words, *viz.* "And further the said Earl of *Abingdon* doth hereby agree to let, and the said *Richard Way* agrees to rent and take for the term of seven, fourteen, or twenty-one years, in case the said Earl shall so long live, at and for the rent of 1400 *l.* a year, to be paid half-yearly, (the said Earl to pay or allow all manner of tithes and taxes, both ordinary and extraordinary,) all his estate, &c. at *Rycot*. It is agreed the said *Richard Way* shall enter on all the said premises immediately, but not commence payment of rent until *Lady-day* next. It is further agreed, that leases with the usual covenants *shall be made and executed* by the parties on or before *Michaelmas* next." On the production of this it was contended, that this being produced as a lease, and not being stamped, could not be read in evidence; and the judge being of that opinion, the plaintiff had a verdict. But on a motion for a new trial, the court were of opinion, that it was *not* a lease. The case in *Noy*, 128. of *Sturgeon v. Paynter*, they said, is in point. In the present case, there is also an express stipulation that leases *should be* drawn before *Michaelmas*: therefore, it plainly was not the intention of the parties that such agreement should operate as a lease, but only that it should give the defendant a right to the immediate possession, till a lease could be drawn. Had it been a lease, the court thought it ought to have been stamped (b).

Articles of agreement were drawn in the following manner: "Articles of agreement between *T. S.* and *D. J.*, entered into in regard to his fulling mills, dry-falting mills, and other conveniences for carrying on the said trades: that the mills and conveniences, with the islands and acre of land mintsfeet, called *Ashacre*, he shall enjoy, and I engage to give him a lease in, for the term of 31 years from *Whitsuntide* 1784, at the rent of 110 *l.*: and that I will purchase one yard in breadth to be laid to the *Race* from the *High Clew*, the length of *Charles Close*: and that if it be bought, &c." Here, though the words *shall enjoy* are sufficient to give the legal interest, yet the latter words restrain their

Goodtitle
v. Way,
1 Term
Rep. 735.

(b) So now
if only an
agreement
under
23 G. 3.
c. 58.

Roe v.
Ashburner,
5 Term
Rep. 163.

Leases and Terms for Years.

their operation, and clearly shew it was the intent of the parties, that there should be some *further* assurance. It was in *feri* at the time: and if a bill had been filed in a court of equity for a specific performance of the agreement, that court would not have told the party that he had a legal and executed contract, but would have decreed a lease according to the agreement. By the subsequent part of the agreement, the landlord was to acquire an additional piece of ground to be laid to the mill, without which the lease was not to be granted: this shews that there was to be some future instrument to give title to the party.]

Dyer, 150.
Co. 155.
Heb. 35.
Moor, 480.
Roll. Abr.
848.
Bendl. pl.
115.

One made a lease for life; & *provisum est*, that if the lessee die within sixty years, that then his executors and assigns should enjoy the land in his right for so many years as should be behind of the sixty years from the date of the lease: this was held to be only a covenant, and no lease, for which there are divers reasons assigned in the books; as first, because the words purport an agreement, and not a grant, and so found only in covenant, which is a very unintelligible reason. Another reason given is, because if it should be construed a demise, it must be void, because there is no person *in esse* to take it; for the executors are not *in rerum natura*. Another reason given is, because nothing of the said term was given to the lessee himself for life, as remainder to him and his executors for sixty years. A fourth and last reason is, because there is no certainty either of the beginning or ending thereof, and therefore it cannot be a good lease. But a better reason than any of these seems to be, that he having in the first part of the deed made a lease in express and proper words, must be supposed to mean something less in this last part of the deed, which varies so widely in the form of expression, and which has a natural and proper meaning of its own as a covenant, but cannot amount or come up to a lease, without violence and force done to the words, as well as the intent of the parties. And this the rather seems probable, because *Moor* holds clearly, that if it had been provided that if the lessor die within sixty years, that then he demised the land to another (who was also a party to the deed) for so many of the sixty years as should be then to come; this would be a good lease; for here he comes into the very same form of expression made use of in the first part of the deed, which was an actual demise, and therefore must be supposed to mean the same thing in the latter part too, and consequently, such words would make it an actual demise.

Cro. Jac.
172. Roll.
Abr. 847.
2 Mod. 80.

A. seised of lands in fee, by indenture, covenants with *B.* before *Easter* then next, to convey those lands by fine, or other assurance to *B.* and his heirs, to the use of him and his heirs, with a proviso, that if *A.* paid to *B.* 100 *l.* at the end of thirteen years, that then he might re-enter, and all assurances should be to the conusor; and he covenanted and granted for him and his heirs, that *B.* and his heirs should enjoy those lands till the end of the said thirteen years, and for ever after, if the 100 *l.* were not paid; and *B.* covenanted to pay annually, during the thirteen years, two capons, and that during the thirteen years he would

not

not commit waste; no assurance was made within the time: and if this, upon the whole deed, amounted to a lease for thirteen years, was the question? And it was adjudged that it was no lease, but only a bare covenant, and this judgment affirmed in error: for the intent of the parties was to make assurance of the inheritance by way of mortgage, and the covenant was only that he should enjoy the lands during the time of the mortgage, whether it continued thirteen years only, or for ever; and if a fine had been levied, or a feoffment made, it is plain this deed had been no lease, but only a covenant to lead or declare the uses of such fine or feoffment; and though none was levied or made, yet the deed still continues of the same nature as it did at first, or as if such fine or feoffment had been actually executed; and the covenant on *B.*'s part, that he would do no waste, does not expound it otherwise, for that was only that he, being a mortgagee in fee, should do no waste, for which otherwise there would be no remedy.

So, where one, by indenture enrolled, for money, bargained and sold lands to one and his heirs, provided, that if the bargainor for five years paid annually 10*l.* to the bargainee at the days limited in the deed, and at the end of the said five years shall pay 240*l.* then the bargain and sale to be void: provided also, and it is further covenanted and agreed between the said parties, that the bargainee, his heirs or assigns, shall not intermeddle with the actual possession of the premises, or the perception of the rents and profits, till default be made in the payment of the said sums: this was held to be no lease to the bargainor for five years, but only in the nature of a lease at will, by reason of the negative words, that the bargainee should not intermeddle with the rents and profits for that time, and, consequently, so long was to leave the bargainor in possession as he was before.

Cro. Jac.
659.
Palm. 201.
2 Roll.
Rep. 241.
Roll. Abr.
859. Pause-
ley and
Blackman.

So, where *A.* acknowledged a recognizance to *B.* of 200*l.* and *B.* by indenture of defeasance, did covenant, promise, and agree with the said *A.* that if *A.* his heirs or assigns, should, after such a time, convey such an advowson to him and his heirs; and if the said *B.* his heirs, executors, &c. should and might at all times thereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said advowson, without the let, suit, trouble, &c. of the said *A.* or any other person or persons, &c. then the recognizance to be void; and the question was, if this last clause amounted to a lease of the advowson? The court was of opinion that it did not, for the intent of the parties was not to make a lease of it, but only a condition to defeat the recognizance; and this last clause should have relation to the estate in fee precedent, being, if the said *A.* his heirs, &c. which cannot be intended of a lease: and further, the clause is indefinite, at all times hereafter, and does not limit any certain time, for life or years, wherein the advowson shall be peaceably enjoyed, and therefore shall be intended during the estate in fee before mentioned: but no judgment was then given.

Co. Ent.
85. a.
Bradston
v. Buck.

Dyer, 124.
pl. 40. 125.
pl. 44.
Plowd. 148.
150.
Bro. tit.
Leases, 71.
Yelv. 85.
Brownl.
136.

If one makes a lease for life, and after grants that the lands or the reversion shall remain to another for twenty-one years after the death of the tenant for life, these words are sufficient to pass a reversionary interest by way of future lease without attornment, though there is not the word *demise*, or any other word usual or proper to describe a lease for years by ; for here, being words sufficient to prove a present contract for the reversionary interest of these lands, after the estate for life determined, these, in case of a lease for years, which is but a contract, are in themselves sufficient, and adequate to any other form.

(L) What Certainty is requisite to Leases for Years as to their Beginning, Continuance, and Ending : And herein,

1. With regard to the Date of the Lease.

Mod. 180.

AS to the date, they may be considered either as it is an impossible date, or an uncertain date ; between which the general difference taken in the books, is, that if a lease be made to begin from an impossible date, there, the lease shall take effect from the delivery ; because it could not be any part of the agreement between the parties, as from the 30th day of *February*, or the 32d day of *April* next : but where the limitation is uncertain, as a lease in *October*, *habendum* from the 20th of *November*, without saying from *November* next following or preceding, or what other *November* ; this uncertainty vitiates the lease itself, because it was part of the agreement, that the lease should begin from the 20th day of some *November* or other ; but it not appearing to the court what *November* was intended, they cannot determine it for the parties, and therefore for such uncertainty the lease itself becomes void.

Sid. 461.
Vent. 84.
2 Keb. 656.
[In two of the cases put, the period of time at which it is the intent of the parties that the lease should begin is manifest, and therefore in reason the leases ought to commence from such time.

So, where a lease is made to begin from the nativity of our Lord God last past, without saying from the feast of the nativity, this lease shall begin presently ; because it could be no part of the agreement between the parties that the lease should begin from the nativity itself, which is past so many hundred years ago ; and therefore, for this impossibility of relation, the lease shall begin presently. But if it were to begin from the nativity of our Lord God generally, or from the nativity of our Lord God next ensuing omitting the word *feast*, *Twisden* was of opinion such lease should be void, for the uncertainty of its commencement. But *Sid.* in reporting the case, seems to be of a contrary opinion, and makes a *quere*, if it shall not begin presently ? and, in truth, this seems the most reasonable opinion, for as to impossibility of relation, there is the same in this as there is in the other ; and therefore, by the same reason, it shall begin presently.

To suppose that the parties referred to an event which happened about two thousand years ago, or had in view an event which never will happen, is to suppose them not in a capacity to contract.]

In

In ejectment, if plaintiff declares on a lease by *J. S.*, 20 *August* for twenty years *a festo annunciationis beate Mariæ Virginis ultimo præterito ante datum hujus indenturæ* or *indenturæ prædictæ*, where no mention is made of any date or indenture before in the declaration, this lease shall be taken to commence from the feast of the annunciation next before the 20th of *August* in that year wherein the declaration is; because it must have been so constructed if the word *ante datam hujus indenturæ* had been omitted, and the addition of those words can be to no purpose, nor of any use, when no indenture at all is mentioned before, and therefore shall be void, or as if they had been totally omitted.

Roll. Abr.
849. Dar-
cett's Case,
850. Elme
v. Leaves.

If a lease be made for thirty-one years, *anno 1531*, and after, *anno 1535*, the lessor, reciting the said lease, by indenture makes a new lease in these words, *noveritis me dictis 31 annis finitis & completis dedisse & concessisse omnia præmissa* to *J. S. habend. & tenend. a die consecrationis præsentium (termino prædict. finito) usque ad finem termini 31 annorum tunc immediate sequentium plenarie complendorum*; this lease shall begin in computation from the expiration of the first lease for thirty-one years after such expiration of the first lease; for if it should begin from the day of the making of the deed, then there would be four years thereof to come after the expiration of the first lease, which would be plainly against the intent of the parties; and therefore it shall be interpreted that the lessee shall have it for thirty-one years after the day of the date, and the expiration of the first term of thirty-one years, *viz.* after both.

Roll. Abr.
849. Dar-
cett's Case,
850. Elme
v. Leaves.

So, where lessee for an hundred years made a lease for forty years to *B.*, if he should so long live, and after leased the same lands to *C.*, *habend.* for twenty-one years from the end of the term of *B.*, to begin and be accounted from the date of these presents; and the question was, if the lease to *C.* should be said to begin presently, or after the term of *B.*? The judges were clear of opinion, that the lease to *C.* should not be accounted from the time of the date, but from the end of the term of *B.*, because by the first words it is a good lease in reversion in that manner; and then it shall not be made void by any subsequent words; or, as *Coke* said, the last words ought to be construed to give an interest as a future interest presently, and the actual possession after the expiration of the first forty years term is well granted by the first words.

Godb. 166.
Dyer, 261.
b. in mar-
gin.

A man made a lease for years, to begin at the feast of our *Lady Mary* for twenty-one years, without shewing in certainty at which of the feast of our *Lady*, *viz.* the *Annunciation* or the *Purification*; yet *Anderson* held it a good lease, and that the lessee might determine the certainty of the beginning of the lease, by his entry, at which of the feasts he thought fit; but *Periam* doubted; and in truth this case seems within the rule before laid down to be void, for the uncertainty of the time of its commencement.

Leon. 227.
Pl. 308.

In ejectment the plaintiff declares upon a lease for years, *habend.* from the sealing and delivery, and declares that the sealing and delivery was 1^o *May*, and the ejectment was the same day: it was moved in arrest of judgment, that the ejectment could not be sup-
posed

4 Leon. 144.
Highman
v. Cook.

posed the same day, for the lease did not begin till the next day ensuing the sealing and delivery. But the court disallowed the exception; for where the lease is to begin from the time of the sealing and delivery, or generally to hold for twenty-one years next following, the ejectment may well be supposed to be the same day; for the beginning of the lease is presently upon the sealing and delivery; and therefore such a lease shall end the same time and hour.

Roll. Abr.
850.

Hob. 18.

Moore v.

Hussey.

[That a lease may commence at one day in point of computation, and at another in point of interest is manifest

If an indenture of demise bears teste 4 May, 10 Jac. and is delivered 5 May, 10 Jac. *habend. a festo annunciationis beate Mariz Virginis tum ult. praterit., pro termino viginti unius annorum prox. sequent. datum dicte indenture*; this lease commences in computation from Lady-day before the date, and in interest the 5th day, which is the day next after the date; and so all the words of the indenture shall take effect the 5th day, being the day of the delivery of the deed, and then the lease will determine on the feast of the *annunciation* twenty-one years after; and therefore the count which was of such a lease, omitting *datum indenture*, was held to be well enough warranted by this lease found *in hac verba*, the ejectment not being laid till the 5th of May.

from the case of Enys v. Donnithorne, 2 Burr. 1192. where it is holden, that a lease, to hold from a day past for fifty years thence next ensuing, the said term to commence and begin from and immediately after the surrender, forfeiture, or other determination of an existing lease of the same premises, was not uncertain in its commencement.]

4 Leon. 14.

pl. 52.

Price v.

Folster.

In ejectment the plaintiff declared upon a lease made 14 Jan. 30 Eliz. from Christmas before for three years, and upon evidence the plaintiff shewed a lease bearing date 13th Jan. the same year, and proved to have been then executed; and it was moved, for this variance between the declaration and the evidence, that the jury might be discharged: but Anderson Ch. Just. said, that the evidence was sufficient to support the declaration; for if the lease was sealed and delivered 13 Jan. it was then a lease 14 Jan. *quod. ceteri iudicarii concesserunt.*

Roll. Abr.

850.

Cornish v.

Cawley.

If an indenture of demise bears teste 25th March, 15 Car. and is delivered the day of the date, and the *habend.* is from and after the day of the date of these presents, for and during the time and term of seven years from henceforth next and immediately following fully to be complete and ended; this lease begins in computation from the delivery of the deed, which was the day of the date, and in interest the next day after the date, and so all the words will have an operation; for it appears that the lessor was not to have the possession till the next day after the date, by the words *habend. from and after the day of the date*, which excludes the day of the date, but that the seven years should commence by computation from the delivery, *viz. from henceforth*, which refers to the limitation of the seven years; and therefore where the plaintiff declared on this lease by indenture dated 25th of March *habend. a die datus* for seven years, it was adjudged against him; for by computation it began *a datu indenture*.

Flow. 198.

Dyer, 177.

pl. 35.

If one makes a lease to A. for twenty-one years, and after makes another lease to B. for years, to begin *a fine & expiratione predict.*

predict. termini 21 annor. dimissor. to A., and then the lease to A. is determined, either by an express surrender, or by an implied surrender in law, as by A.'s acceptance of a new lease for life from the lessor, the lease to B. shall begin presently: but if the lease to B. had been to begin post finem & expirationem predict. 21 annor., there the lease to B. should not begin upon the surrender, forfeiture, or other determination of the first term to A., till the twenty-one years actually run out by effluxion of time: the reason of which difference is, that in the first case the word term comprehends as well the estate or interest in the land as the time for which it is demised; and therefore the second lease being limited to begin a fine & expiratione predict. termini 21 annor., whenever the term which includes also the estate and interest is determined, the lease to B. shall begin; but in the other case the lease to B. is not to begin till after the end and expiration of the twenty-one years, which cannot be ended but by effluxion of time.

Co. Lit.
45. b.
Co. 154.
Roll. Abr.
849.
Leon. 106.

The bishop of Bath and Wells, 18 H. 8. made a lease in writing to A. and B. for sixty years; proviso, that if the said A. and B. die within the said term of sixty years, that then, after the death of the said A. and B., and of the longer liver of them, it shall be lawful for the said bishop and his successors, to enter into the said lands: A. dies; the bishop dies: and his successor, 22 H. 8. demises the said lands to C., *habend. cum post five per mortem, sursum redditionem, vel forisfact. pred. B. vacare contigerit*, for sixty years, with confirmation of the dean and chapter; and then B. dies within the sixty years, and the grantee of the bishop would avoid this lease to C. 1. Because being limited to begin upon one of three events, viz. death, surrender, or forfeiture, none of which happened, it could not begin at all; for it was not determined by the death of A. and B., within the sixty years, as all the court agreed, but continued till the lessor or his successors entered; for so it was expressly provided by the lease, and that was a mere condition, and not a limitation; and then the second lease, as was argued, cannot begin at all, or at least the time thereof shall run on from the death of B. the survivor. But it was adjudged the second lease was good; for it was not only limited *cum per mortem, sursum redditionem, &c.* the first lease should determine, but also *cum post mortem vacare contigerit*; so that this second lease may well begin when the first term by effluxion of time is run out *post mortem* of the parties. And this differs from a remainder limited to one after the death of another: there, it ought to begin immediately after the death, without any *interim*; but here, it shall not begin till after the first term run out *post mortem*, whenever in such manner *vacare contigerit*, and is a good lease presently in point of interest, to take effect in possession whenever the first lease, by any of these accidents, happens to be at an end, and is a good *interesse termini* in the mean time. And this construction ought to be made, to support the lease, because it shall be taken most strongly against the lessor, and for the benefit of the lessee.

6 Co. 34.
Cro. Jac.
71. Bishop
of Bath and
Wells's case.
Dyer, 312.
pl. 89.

If A., reciting that B. hath a lease for years of such lands, demises the same lands to C. for years, to begin after the end or determination

Bendl. pl.
72.
And. 3.

Dyer, 116.
 pl. 70.
 Bro. tit.
 Leases, 62.
 Plow. 148.
 Roll. Abr.
 849. Cro.
 Car. 399.
 Jon. 355.
 Miller and
 Manwaring.
 Co. Lit.
 46. b.
 Lev. 77.
 Keb. 360.
 Basset v.
 Lewis.
 2 Leon. 11.
 pl. 17.
 Vaugh. 73.
 2 Lev. 242.

determination of the said lease to *B.*, where in truth *B.* hath not any lease at all of those lands, the lease to *C.* shall begin presently; for in judgment of law, a void limitation and no limitation is all one. So, if he recites a lease which in construction of law appears after to be void, or misrecites a good lease in a point material, *habend.* from the end of the said lease, this new lease shall begin presently; though where the first lease is good in law, and only misrecited in a point material, the new lease can begin presently only in enumeration of years, not in interest, till the end of the first lease; for in these cases the commencement of this new lease, being referred to a thing which is not, cannot be any ways ascertained or governed thereby, and then it is as if no such recital had been, which would have left the lease to begin presently, as the strongest construction against the lessor, since there is nothing now to ascertain or determine its beginning at any other time. [See Preston on Estates, ch. "Estates for Years."]

Lev. 234.
 Sid. 460.
 Vent. 83.
 2 Keb. 322.
 Foot v.
 Berkeley.

So, where the queen-mother, having the inheritance of certain lands settled on her for her jointure, 14 *Car.* 1. reciting, that whereas Queen *Eliz.* 22 *April* in the 42d year of her reign, had demised those lands to such a one, &c., (whereas the lease intended was in truth 32 *Eliz.*) the said queen-mother did thereby demise the said lands, to begin after the end or determination of the estate granted to the other *per literas patentes predictas*, for twenty-one years; and the question upon this misrecital was, when the second lease for twenty-one years should begin? whether after the expiration of the first lease made 32 *Eliz.* though falsely recited to be made 42 *Eliz.*? or whether it should begin presently? It was adjudged, that for this misrecital the second lease should commence presently; and so the lessee was obliged to pay a rent of 60*l.* *per annum* for the whole twenty-one years, though he had nothing in the lands all that time. And this judgment given in *C. B.* was afterwards affirmed upon error in *B. R.* And in this case the court agreed, that if the date of the recited lease only had been mistaken, and the second lease had been of the lands, *habend.* after the expiration or determination of the estate or lease of the first lessee generally, in such case the second lease had been good, and should not have begun before; for then there had been sufficient certainty for the time of its commencement, and then *utile per inutile non vitiatur*; but here being limited to begin after the determination of the estate granted *per literas patentes predictas*, where there were no such letters patent, and so the relation idle and null, the second lease begins presently, as if no such recital or relation had been, and there is no *utile* at all; for it is tied up to begin after a lease which is not. And as to *Periam's* opinion, that if I let lands to *B.* to begin after the expiration of a lease thereof, which I have made to *J. S.*, where in truth I have made no lease to *J. S.*, that the lease to *B.* shall never begin; this was denied to be law, and against the current of all authorities. The court further said, the principal case here differs from *Withers* and *Casson's* case, where one

Rob. 128.
 Withers v.
 Casson.

one made a lease for years, *habend. a festo purificationis*, and after by deed, reciting that he had made a lease to commence *a festo annunciationis*, granted the reversion to another, and that grant held good: for in the grant in the reversion the misrecital of the particular estate is not material in the case of a common person, so long as he hath a reversion in him; but here in the principal case one term is recited to give certainty to the commencement of another, and is tied up by such precise words to begin after the determination of the lease granted by the said recited letters patent, that this cannot be referred to a lease that varies in the date, though agreeing in other circumstances (which yet is not here, for the certainty of the term to *B.* is not recited): and though a lease is good without a date, yet when a lease is recited to be of such a date, a lease which bears another date cannot be said to be such recited lease; so that the lease here must begin presently; which, by the way, makes the grant good, either to pass the reversion with attornment, or being by indenture, to take effect upon the surrender, forfeiture, or other determination of the first term; and such recital makes no estoppel either against the lessor or lessee, or any claiming under them; or if it should, yet the jury are not estopped to find the truth; and then the court shall judge accordingly.

Vaugh. 82.
Vent. 84.

And this rule, that if the former lease be misrecited in the date, &c. and a new lease made, to begin after the expiration of the said recited lease, that such new lease shall begin presently, holds as well in the lease itself as where the jury find an indenture of lease, whereby it is recited, that the lessor made such former lease of such date, and under such rent, without finding it so in fact, but only by way of recital in the deed: such second lease shall in construction of law be adjudged to begin presently, though in the deed it is limited to begin after the expiration of the first lease so recited; because the jury do not actually find the first lease, but only a recital of it in another deed, which recital may be false, for ought appears to the court; and then the second lease shall begin presently, as if no such first lease were at all, since the not finding it effectually is, as if there were none such made.

Vaugh. 73.
80. Row
and Hunt-
ington.
Dyer, 93.
pl. 28.
4 Co. 74.
Palmer's
case.
Cro. Eliz.
603.

King *Hen. 8.* in the 31st year of his reign, leased lands to one for twenty-one years, and after granted the reversion to a bishop, who, reciting all the lands contained in the letters patent, and the land itself before leased, by name, and reciting the letters patent thus, that whereas *H. 8.* by his letters patent, dated 20 *H. 8.*, where in truth they were dated 31 *H. 8.*, and also misreciting the day of the date, grants all the lands, tenements, &c. to the first lessee for a certain number of years, *post expirationem hujusmodi literarum patentium*: in this case it seems, that the date being mistaken, and the commencement of the new lease referred to the expiration of the said letters patent, when in truth there were no such letters patent as were recited, the second lease shall begin presently, and so by acceptance thereof will amount to a surren-

2 Roll.
Abr. 55.
Halfwell and
Ayleworth.

det of the first: it would have been different, if the second lease had been limited to begin after the end of the first term generally.

2. With regard to other Circumstances taken Notice of in the Deed of Lease, whereby to ascertain the Commencement thereof.

As to other collateral circumstances taken notice of in the deed of lease in order to ascertain the commencement thereof, these are various, according to the agreement of the parties.

2 Leon. 86.
Godb. 25.
Co. Lit.
45. b.
Co. 155.
6 Co. 35.
Plow. 6.
373. 524.
Roll. Abr.
848.

Therefore, if one makes a lease for years to another for so many years as *J. S.* shall name, this at the beginning is uncertain; but when *J. S.* hath named the years, this ascertains the commencement and continuance of the lease accordingly, and in the mean time, if the lessee enters, he seems to be tenant at will. (But *quare* if by such entry before the commencement of the lease he is not a disseisor, as other lessees are who enter before their time?) But if the lease had been made for so many years as the executors of the lessor should name, this could not be made good by any nomination, because to every lease there ought to be a lessor and lessee; and here the nomination which ascertains the commencement not being appointed till after the death of the lessor, makes the lease defective in one of the main parts of it, *viz.* a lessor, and therefore, of consequence, must be void; which is also the reason that in the first case the nomination ought to be made in the lifetime of the lessor, and not by *J. S.* after his death, for then it will be void.

Co. Lit.
45. b.
Roll. Abr.
848.

If a person makes a lease for so many years as he shall live, or the parson of *D.* makes a lease of his glebe for so many years as he shall be parson there, these leases are said to be absolutely void, for the uncertainty of their continuance; because none can say how long the lessor will live, or be parson; and then it cannot be a lease for years, when by no possibility the number of years can be ascertained. But if the lease were for twenty-one years, or any other certain number of years, if the lessor should so long live, or continue parson, or if *J. S.* should so long live, these are good, because the lease at first is certain for the determinate number of twenty-one years, though the death of *J. S.* may determine it sooner; and that is a common and usual limitation, and seems to have been introduced to obviate the objection of uncertainty in the other manner of leasing. But even in that case it should seem that the lessee will be tenant at will, or if livery were made, will be tenant during the life or incumbency of the lessor, and so have the freehold in him, though for want of certainty in the number of years, he cannot be said lessee for years.

5 Co. 7.
Moor. pl.
340. Cro.
Eliz. 199.
2 Leon. 105.

One made a lease of *Blackacre* to *A.* for ten years, and of *Whiteacre* to *B.* for twenty years, and after by indenture reciting both leases makes a lease to *C.* of *Blackacre* and *Whiteacre* for forty years, *habend.* after the end or determination of the said several demises made to *A.* and *B.*, and then the lease to *A.* of *Blackacre* determines;

determines; and if the lease to *C.* therein should begin presently, or if *C.* must wait the determination of the other lease to *B.* likewise before his lease should commence, was the question? And, it was urged, that this lease should begin all at one time, and not have several commencements. But it was adjudged, that this lease to *C.* in *Blackacre* should begin presently; for the *habend.* shall be taken *respective reddendo singula singulis*, viz. that the first lease of *Blackacre* to *C.* for forty years shall begin presently after the determination of the first lease thereof made, and so for *Whiteacre*, when the first lease thereof determines: because every deed shall be taken strongest against the lessor or grantor, and most beneficially for the lessee or grantee, the reverse whereof would happen in this case without such construction, and it would be against the plain intent of the parties, to let in the lessor to the possession and enjoyment of the lands comprised in the first lease, till the second lease, which had no relation thereto, were determined.

In ejectment the plaintiff declared, that *J. S.* demised to him *per quodd. scriptum obligatorium* such lands, *habend. a die datús indenturæ prædictæ*; on not guilty pleaded, it was found and adjudged for the plaintiff in *Ireland*: and it being assigned for error here, that there was no time specified when this lease should begin; for it was *habend. a die datús indenturæ prædictæ*, and no indenture was mentioned before, but only *scriptum obligatorium*; it was resolved, that the writing should be intended an indenture, though improperly called *scriptum obligatorium*; for every deed obligeth; or if it should not be intended an indenture, then it begins presently, as if it had been from an impossible limitation, as the 40th of *Sept.* or such like.

Vent. 137.
2 Keb. 796.
Taylor v.
Fitzgerald.

Copyhold land was granted to *A., B.,* and *C.* for their lives *successive*; and then the lord grants and demises the said land to *D.* for forty years, after the death, surrender, forfeiture, or other determination of the estate to *A., B.,* and *C.*; then *A.* and *B.* die, *C.* marries, and dies; and his wife holds herself in for life by the custom, as her free-bench, and dies; and if the lease for forty years should commence from the death of the husband or the wife, was the question? for if it should begin from the death of the husband, it would be now ended, and so the ejectment not maintainable; if from the death of the wife, there would be yet twenty years of the lease to come: And *per curiam*, though the law will in general supply these words, *which should first happen*, so that the lease should begin upon the death, forfeiture, surrender, or other determination, which should first happen, yet in this case it shall not begin till after the death of the wife, for that is the first effectual determination thereof: for it does not determine to any purpose by any of the other ways, since the wife is in, in continuance of her husband's estate, for life; and it cannot reasonably be intended that this lease should begin during the continuance of the precedent estate, which by possibility may continue longer than the forty years; for the wife may outlive the
forty

Lev. 20.
Chantrell
v. Randal.
2 Sid. 165.
S. C. by the
name of
Clerk v.
Candle.
[Adjourn.
according
to both re-
porters.]

forty years, and then the lease for forty years from the death of the husband would be void.

Mith.
6 Geo. 2.
in *Canc.*
Irish v.
Hook.

So, in a late case, where *B.* had a lease of twenty-one years of copyhold lands, to commence after the determination of the estate which *A.* at that time had therein, and the widow of *A.* being entitled to her free-bench, and happening to outlive her husband twenty-one years, it was held by my Lord Chancellor, that the estate of the wife was only an excrescence of her husband's estate, which did not determine till the wife's death, at which time the lease made to *B.* should commence, and continue for twenty-one years.

3. The Certainty of Leases for Years as to their Continuance.

Flow. 271.
Say v.
Smith and
Fuller.

As to the certainty of leases for years, as to their continuance, this ought to be ascertained either by the express limitation of the parties at the time of the lease made, or by a reference to some collateral act, which may with equal certainty measure the continuance thereof, otherwise they will be void.

Flow. 271.

Therefore, where a man made a lease for ten years, and granted that if the lessee, his heirs or assigns, should pay to the lessor or his assigns, such a parcel of tiles at the end of every ten years next ensuing, that then he, his heirs or assigns, should have a perpetual demise of the premises from ten years to ten years continually following, and out of the memory of man; this was held to be a good lease but for ten years certain; because for all the years to come it was uncertain (besides the repugnancy and nonsense of the words *extra hominum memoriam*); for the payment of the tiles was to precede all the ten years that ever should be, and so must last to the end of the world, before any second ten years, by virtue of the lease, was to begin; and then to be sure there could be no ten years at all; and so all the other ten years, being to begin upon an impossible condition precedent, can never take place at all, but are absolutely void and idle.

Co. Lit.
45. b.
6 Co. 35.
Flow. 273.
Roll. Abr.
349.
3 Co. 19.
Flow. 522.

If *A.* lets lands to *B.* for so many years as *B.* hath in the manor of *D.*, and *B.* hath then a term for ten years in that manor, this makes *A.*'s lease to him good, and fixes the measure and continuance thereof, so that *B.* shall have the lands demised for ten years. So, a lease to one during the minority of *J. S.*, who is then ten years of age, is a good lease for eleven years, if *J. S.* so long live; for if he die sooner, that determines the lease, since nothing appears to extend it beyond his life, and his minority ceases by his death.

6 Co. 35. b.
Flow. 273.
Co. Lit.
42. a.

If I have a rent of 20*s.* *per annum* in fee issuing out of *Black-acre*, payable annually at the feast of *Easter*, and I grant that rent to another till he shall have received of the same rent 21*l.*, the grantee shall have the rent for twenty-one years certain, because the land is a certain security for 20*s.* *per annum*, which will take up twenty-one years certain to answer 21*l.*, and therefore so long the grant of the rent shall have continuance.

But

But if a man lets lands of the value of 20 s. *per annum* till 21 l. be levied of the issues and profits, this is but a lease at will without livery, because it is uncertain whether the land will be every year of an equal value; and though livery should be made, whereby he will have a lease for life, or a freehold estate, yet this will be determinable upon the 21 l. levied; for by the original contract he was to have it no longer than till the money levied.

6 Co. 35.
3 Leon. 157.
Bro. tit.
Leases, 67.
Co. Lit.
42. a.
3 Bull. 100.
Plow. 273.

If a woman be *ensient* with a son, and a lease be made till such issue *in ventre sa mere* shall come to full age, this is a lease only at will, and cannot be any lease for years; because it is uncertain when or whether ever the son will be born, and consequently the beginning, continuance, and ending of this lease is uncertain; and therefore it cannot be said any lease for years, since it is to begin presently as a lease: and yet nothing appears in the deed itself, nor is there such a reference to any collateral circumstance as may then measure the continuance thereof.

6 Co. 35.

If *A.* seised of lands grants to *B.* that when *B.* pays to *A.* 20 s. that thenceforth he shall have and occupy the lands for twenty-one years, and after *B.* pays the 20 s.; this is become a good lease for twenty-one years from the time of such payment made; for though the commencement of it was contingent and uncertain, and depended upon *B.*'s election to pay the 20 s., yet after he had paid them, this takes off all uncertainty, and fixes the commencement and continuance of the lease.

Co. Lit.
45. b.
6 Co. 35. a.
Roll. Abr.
849.

If one makes a lease to *J. S.* for twenty years, if the coverture between *A.* and *B.* shall so long continue, this is a good lease for that time *prima facie*, though the dissolution of the coverture may determine it sooner. And there also it seems, that a lease to one generally during the coverture between *A.* and *B.* is a good lease: but this surely can be no other than a lease at will, for the uncertainty how long the coverture will continue takes off from any certainty in the number of years that can be affixed to such lease; and consequently, it cannot be esteemed any lease for years, more than where it is for so many years as the lessor shall live, or continue parson, &c.

Plow. 273.

If one lets lands for one hundred thousand days, this by *Bro.* is a good lease for that time, because the measure and continuance thereof by days is as certain as it would be if it were for so many years as comprehend those days, since days are part of and go to make up the years; though it should seem that this cannot be properly called a lease for years, because the years are only an accidental circumstance in the enumeration of the days, not any part of the original contract between the parties.

14 H. 8. 13.
Bro. tit.
Leases, 13.

If a man makes a lease for years, without saying how many, this shall be a good lease for two years certain, because for more there is no certainty, and for less there can be no sense in the words.

6 Co. 35. b.
Bro. tit.
Leases, 13. j

If one makes a lease for ten years at the will of the lessor, this is a good lease for ten years certain, and the last words void for the repugnancy by *Bro.* But if one lets lands at will for a year, *& sic de anno in annum*, this is a lease only at will by

Bro. tit.
Leases, 13.
22. 14 H. 8.
13. a.

the first words, and the last words being repugnant shall not controul them, or add any more certainty to its continuance.

2 Roll.
Abr. 851.
6 Co. 35. b.

If a man leases lands for such a term as both parties shall please, this is but a lease at will, because what that term will be is utterly uncertain; and the pleasure of the parties seems to be limited to attend the continuance as well as the commencement and first fixation thereof.

3 Bulf. 158.
Roll. Rep.
187. 2 Roll.
Abr. 850.
Dyer, 24.

A parson made a lease of his rectory to one for three years, and so from three years to three years, and so from three years to three years during his life; or, as it is in *Rolle*, for three years, and at the end of those three years for other three years, *Et sic de tribus annis in tres annos* during the life of the lessor. The whole court held it clearly a lease for twelve years; but by *Dodderidge*, if the lease had been for three years, and so from three years to three years, and so from the said three years to three years; this had been but a lease for nine years, because the words *from the said three years* tie up the relation retrospectively to the three years last mentioned, which made in all but six years, and then there are but three years more added, which make the whole but nine years; and for the words (*during the life of the lessor*,) they cannot enlarge it to any further certain number of three years, by reason of the uncertainty of the lessor's life; and therefore, beyond the twelve years, or nine years, it amounts only to a lease at will, unless livery were made, which must necessarily pass a freehold determinable upon the lessor's death.

3 Keb. 760.
768. *Ferrington v. Graves*.

And yet in one book where a lease was made for three years, and after the end of those three years for other three years, *Et sic de tribus annis in tres annos* during the life of the lessor; this was held to be only a lease for nine years, because the words *Et sic de tribus annis* shall be referred to the three years last mentioned; for otherwise these words would exclude the three years next after the six years, and make the three last years to begin after nine years, and so make a chasm in the lease, by shutting out the three years next after the six years, so as for the three last years it should be only a future interest; which case seems to be of a new stamp, and to thwart the preceding case, as to the resolution of its being a lease for twelve years; and there *Jones and Wild* held, that a lease *a tribus annis in tres annos* was but a lease for three years to commence *in futuro*.

2 Lev. 241.
College of
Manchester
v. Trafford.
[2 Show.
31. S. C.
reports it a
lease for 21
years to the
same person,
and after in
the same
lease a cove-
nant that
the lessee
shall have
the lands for

Error of a judgment in ejectment at *Lancaster*, where the case on a special verdict was this: The college in the time of Queen *Eliz.* reciting a lease made by them 1 E. 6. demised to one *Traf-ford* for twenty-one years rendering 20*l.* per ann. rent, *habendum* from the end of the said term, made in the time of E. 6., and then follows a condition of re-entry for non-payment of the rent, and after that a covenant and grant, that after the said twenty-one years ended the lessee shall have the land for other twenty-one years, and so from twenty-one years to twenty-one years, till ninety-nine years are past thence next ensuing shall be complete and ended; and it was found that there was no lease made in the time of E. 6., and that since the date of the lease made in the time

time of Queen *Eliz.* more than ninety-nine years are passed, but from the end of the term of twenty-one years ninety-nine years are not yet come; so that the question was only, if the lessee shall have ninety-nine years in all from the time of the date of the lease *tempore Eliz.* or ninety-nine years over and above the first twenty-one years? for it was agreed, that though no number of twenty-one years will center in ninety-nine, yet the term shall last for ninety-nine years, which is a certain term, and the odd years shall be rejected. And it was adjudged at *Lancaster*, that the lessee shall have ninety-nine years besides the first twenty-one years, which shall not be accounted parcel of them, and that by reason of the word *thence*; for if it should be from the making of the lease *tempore Eliz.* it would be *hence*; but *thence* is a word which denotes another time, not the present time, and so *thence* must refer to the making of the first twenty-one years, because there is no other time to which it can refer, there being no lease at all 1 *E. 6.* to which it can refer, and so the term is not yet expired; and of that opinion was the whole court, and the judgment was affirmed.

If a man makes a lease for a year, and so from year to year, *quamdiu ambabus partibus placuerit*, this is a lease for two years certain at least; and at most, after three years, this is but an estate at will: so, if a parson makes a lease for a year, and so from year to year as long as he shall continue parson, or as long as he shall live; this is a lease for two years at least, if he lives and continues parson so long; and after the two years, or at most after three years, but an estate at will for the uncertainty, unless livery be made.

One made a lease for three years, and after for three years, and so from three years to three years until ten years be expired: this was resolved to be a lease but for nine years; and that the odd year should be rejected, because that cannot come to fall within any three entire years according to the limitation, which in this case is to be taken all together as one year, else so much of the limitation, as cannot come within that description, must be rejected. And this seems to agree with *Brook* and *Plowden*, who in general hold a limitation in that manner from year to year for forty, fifty, or one hundred years to be a good lease for the whole term, because this is no such break of an odd year, at the latter end of the lease, as there is in the other case.

One made a lease *de anno in annum, quamdiu ambabus partibus placuerit*: this was agreed by all to be a lease certain for two years: but there the lessee entered and occupied for two years, and also for part of the third year, and then died; and for rent arrear for part of the third year debt was brought against his executors; and upon *nihil debet* pleaded, and verdict for the plaintiff, it was moved in arrest, &c. that after the two years, this being a lease at will determined by his death, and then no action lies for the rent of the third year; and of this opinion was *Popham*. But it was held by *Gawdy* and *Fenner*, that though at first this was a lease certain but for two years, yet when he occupied part of the third year, this was then become a lease certain for that year also,

21 years more after the expiration of the said term, and so from 21 years until 99 years be complete and ended; and adjudged good, and to be two leases, and not one, viz. for 21 years, and also for 99 years besides.]

Plow. 273.
Co. Lit.
45. b.
6 Co. 35.
Cro. Jac.
308.
Bull. 215.
Roll. Abr.
851.
Lev. 46.
2 Jon. 5.
Lutw. 214.
Noy, 143.
Roll. Abr.
850.
Bro. tit.
Leases, 49.
Plow. 273.
522. a.
2 Co. 23.
2 Lev. 242.

Cro. Eliz.
775. Agard
v. King.
Mod. 3.
Sid. 423.
2 Keb. 543.
Gostwick
v. Mason.
Kailw. 63.

so that neither of them could avoid it; for otherwise, after that the lessee hath been at great charges in manurance, the lessor, by a determination of his will, might strip him of all his profit.

Mill. 7 Ann.
in B. R.
Legg v.
Hackett.
2 Salk. 414.
pl. 6. S. C.
by the name
of Legg v.
Strudwick.

A parol lease was made *de anno in annum, quamdiu ambabus partibus placuerit*; it was adjudged that this was but a lease for a year certain, and that every year after it was a springing interest, arising upon the first contract and parcel of it; so that if the lessee had occupied eight or ten years, or more, these years, by computation from the time past, made an entire lease for so many years; and if rent was in arrear for part of one of those years, and part of another, the lessor might distrain and avow as for so much rent arrear upon one entire lease, and need not avow as for several rents due upon several leases, accounting each year a new lease. It was also adjudged, that after the commencement of each new year, this was become an entire lease certain for the years past, and also for the year so entered upon; so that neither party could determine their wills till that year was run out, according to the opinion of the two judges in the last case. And this seems no way impeached by the statute of frauds and perjuries, which enacts, that no parol lease for above three years shall be accounted to have any other force or effect than of a lease only at will: for at first, this being a lease certain only for one year, and each accruing year after being a springing interest for that year, it is not a lease for any three years to come, though by a computation backwards, when five or six or more years are past, this may be said a parol lease for so many years; but with this the statute has nothing to do, but only looks forward to parol leases for above three years to come. And this opinion, in the principal case, seems to be confirmed by a like resolution of the court, where the plaintiff declared, that he retained the defendant *anno 1657* for one year then next ensuing, and so from year to year, *quamdiu ambabus partibus placuerit*; and laid it, that *anno 1661*, the defendant withdrew himself from his service for a month, *per quod, &c.* And the court held, that though the retainer at first was for a year certain, yet after every other year begun, the retainer held for that year also, and gave judgment for the plaintiff.

2 Keb. 16.

2 Salk. 413.

[A lease
was granted
" to hold
" from Michaelmas-
" day for
" one whole
" year, and
" so for two
" or three
" years, or
" any such
" further
" term of

And yet there are other cases in which it seems to have been held, that a lease made *de anno in annum, quamdiu ambabus partibus placuerit*, is a lease for two years certain at first, and after a lease for every several year that the lessee holds on; and that if upon such lease three years rent be in arrear, the declaration must be of several leases for so many years as were past. And it is held, that to oust the lessee there must be half a year's warning given (*a*), ending at the expiration of the year; and that unless such warning be given, it will be evidence of an agreement to hold for another year (*b*). However, it appears from all the cases, that there is yet no uniform, unanimous opinion settled as to this matter.

" years as the parties should think fit and agree, on yielding and paying for the said one year, and from
" thence yearly and every year during such term or terms as should be thereafter granted, 35 l. per
" annum." According to Wilson's report, this was adjudged to be a lease for two years. Harris v.
Exaine, 1 Will. 262. But according to Ambler, who was of counsel in the cause, it was holden to be a
lease for one year only without a subsequent agreement; for that if it had been doubtful under the words of
the *habendum*, those under the reservation fully explained them. Ambler. 329. If we suppose the court
to be alluding to different periods of time in these reports; in the former, to the time past, to the time
the

the tenant had actually occupied ; in the latter, to his estate at the commencement of the lease ; both reports may be correct, and there will be no contradiction between them. For it is now clear that a lease for a year, and so for such further term as the parties shall agree upon, or, from year to year, as long as both parties shall please, is, with a view to its present extent, a lease for a year certain, and no more ; though with a view to the time which has elapsed, to the number of years the tenant has occupied, it is considered as an estate for all that time including the current year. In the case of *Agard v. King*, *supra*, where the court are made to say, that such a lease was a lease certain at first for two years, it is to be remembered, that they were not considering the present, but the past estate which the tenant had : what they say therefore must be taken to be with reference to that, and to import nothing more than that it was at first, that is, upon the expiration of the two years, a lease for those two years, whatever it might be as to the third year which the tenant had entered upon, and upon which only the question in that case arose. And so in the case of *Bellasis v. Burbridge*, referred to in *Salk.* 413. and fully reported in *Lutw.* 213. the lessee under a demise for a year, and so from year to year, &c. had occupied one year, and part of another ; and the court say, that this was a good lease for two years at least ; that is, that the tenant having continued the occupation part of another year, the lease was thereby become a good lease for that year ; not that the lease by the terms of it was originally and in its creation a lease for two years certain.—And notwithstanding the puzzle and contrariety of opinion in the books with respect to these running leases, the law is now considered as settled agreeably to the case of *Legg v. Hacker* or *Strudwick*, above reported. They are leases for one, two, or more years, according to the form of the lease, dependent for their further continuance upon the will of the parties. If it be the will of the parties that they should have a further continuance (and that such is their will, the law will presume, unless the contrary be evidenced by a regular half year's notice to quit given by the one to the other), the tenant so continuing in possession is not a mere tenant at will, but a tenant for years : it is the will of the parties that he should continue the tenancy another year : his precarious interest is for such further term become certain ; but he has still the same kind of estate which he formerly had. *Birch v. Wright*, 1 Term Rep. 380. *Prest.* on Estates, ch. Estates for Years. (a) 1 Term Rep. 162. (b) But this notice may vary according to the custom of the country, and the nature of the hereditaments in lease. *Roe v. Wilkinson*, Co. Lit. 278. b. note 1. 14th edit. 2 *Salk.* 414. 3 *Burr.* 1609.]

One let a stable for a week for 8 s. and so from week to week at 8 s. a week, *quamdiu ambabus partibus placuerit* ; this was held, at most, but a lease for three weeks certain, and for the residue at will ; so that the lessee, at the end of the three weeks, was not punishable for negligent keeping of his fire, that being only an involuntary waste, wherewith lessee at will is not chargeable. 3 Lev. 359. *Panton v. Iham.*

[A lease was granted for seven, fourteen, or twenty-one years, as the lessee should think proper. And by Lord *Mansfield*, this was at least a lease for seven years ; then if the lessee continues, it is for fourteen years ; if at the end of that time he still continues, it is for twenty-one years. And agreeably to this decision, it hath been lately determined (c), that a lease for three, six, or nine years, determinable in 1788, 1791, 1794, is a lease for nine years, determinable by either of the parties at the end of the first three or six years, on giving reasonable notice to quit.] *Ferguson v. Cornish*, 2 Burr. 1032. more accurately in 2 Term Rep. 463. (c) *Goodright v. Richardson*, 2 Term Rep. 462.

4. The Certainty of Leases for Years as to their Duration and Ending.

As to this, though the preceding point may seem to have taken in all that can come in properly here, since the continuance of leases for years must shew their determination likewise ; yet there are some cases remaining which seem more proper to be inserted under this head.

Therefore, where a lease was made for forty years to two persons, if they lived so long, or to A. for forty years, if he and B. should so long live, or the lessor and lessee, or the lessor and J. S. should so long live ; in all these cases the death of either of them determines the lease, because their lives are the collateral measure 2 *Bendl.* 2. pl. 27. 13 Co. 66. 2 *Brownl.* 292. 5 Co. 9. Cro. Jac. 78. - and

3 Bull. 131.
Roll. Rep.
309, 310.
3 Leon. 10.
pl. 150.

and limitation of the continuance of the term, or rather the condition whereon the estate depends : and by the death of one of them, the condition is as much broken as if both were dead ; since, with regard to the condition, both made but one person ; and they cannot now both so long live, one being dead already ; and the condition being entire, cannot be severed or divided, so as when part of it is broken and gone, the estate should still subsist and hang upon the other part thereof : and therefore, this differs from a lease to two persons for their lives, for this gives an estate to both for their lives, and both have an estate of freehold therein in their own right, and consequently, this cannot determine by the death of one of them, for then the other could not be said to have an estate for his life, as the lessor at first gave it. But *Rolle* seems to think, that where it is to two for forty years, if they so long live, that this does not determine by the death of one of them, because it is an interest in both, which shall survive ; but the other books are against it, because their life is but a collateral condition and limitation of the estate, which is broken when one dies.

Vent. 74;
Bailes v.
Wenman,
& vide
1 Brownl. 30.
Mod. 187.

Upon articles of intermarriage between *A.* and *B.* it was agreed, that the defendant, father of *A.* should settle the lands in question upon *C.* for his life, and after his death upon *B.* for her jointure, with a proviso, that *C.* should make a lease thereof to the defendant for ninety-nine years, if he and *D.* his wife should so long live, which lease was made accordingly ; then *D.* dies, and if by her death the lease was determined, was the question between the defendant and the plaintiff, lessee of *C.* And the court, upon the first opening of the case, without argument, were all of opinion that it was, and gave judgment accordingly on the reasons of the foregoing case.

Moore, pl.
375.
3 Bull. 131.
333. Roll.
Rep. 310.
2 Brownl.
292. Cro.
Eliz. 269.
Leon. 74.
244. Co.
Lit. 225. a.

One made a lease for forty years, if *A.* his wife, or any of their issue, should so long live ; and it was adjudged that the lease was not determined by the death of one of them, but should continue till all were dead, by reason of the disjunctive *or*, which goeth to and governs the whole limitation. But if the words had been, if *A. and his wife and issue should so long live*, there, clearly, by the death of any of them within the forty years, the term had been at an end, by reason of the copulative *and*, which conjoins all together, and makes all their lives jointly the measure of the estate.

Cro. Eliz.
643. Noy,
70. Wren-
ford v.
Gyles.

A lease was made for twenty-one years, if the lessee so long lived and continued in the lessor's service ; the lessor dies : *per curiam*, the lease is not determined, because it was the act of God that he could serve no longer.

Dyer, 67.
pl. 18.
Co. Lit. 219.

A lease is made to two for years, with a proviso, that if the lessees die within the term, the term shall cease ; they make partition, or one aliens his part, and dies, yet the lessor cannot enter into his part, but the assignee, or executors of the lessee, (if no assignment) shall have that part during the life of the survivor, and there shall be no occupancy. For it is not like a lease made to two for term of their lives ; there, if they make partition, and one dies, his part shall revert to the lessor presently. And if it had

had been to them for their lives *Et eorum diutius vivent.*, yet this would not have prevented the reverter upon such partition, *quia expressio eorum qua tacite insunt nihil operatur*; and the partition breaks the joint-tenancy, and defeats the right of survivorship, and so lets in the reversion *immediate* to each one's single part. But in the principal case, the lease at first is general and absolute to both for so many years, which gives them a joint-tenancy in the term, and will carry it to the survivor and his executors; and then the proviso, which comes after, though it straiten it from going to the executors of the survivor, yet it does not give it to the lessor till both are dead within the term; and the partition or alienation breaks the joint-tenancy, and prevents the survivorship, and consequently, none but the alienee, or executors of the lessee, can have that part during the life of the other lessee.

3 Aff. pl. 8.
4 Co. 73.
3 Bull. 131.
Roll. Rep.
310.

(M) In what Cases, and to what Respects an Entry by the Lessee is requisite to the Perfection of his Lease,

AS to this it is to be observed, that at common law no lease for years, whether it were with or without any reservation of rent, was looked upon to be complete till an actual entry by the lessee: for though the lessor had done all on his part to perfect the contract, so that he could not afterwards any way derogate from, or avoid it, ye till there was a transmutation of the possession by the actual entry of the lessee, it wanted the chief mark and indication of his consent thereto, without which it might be unreasonable to adjudge him in actual possession to all intents and purposes; since it might so happen that such lease was made in his absence, and when he knew nothing of it, and perhaps might be greater than he would be willing to take; or the estate might be so incumbered as to bring a load upon him rather than any advantage. For these reasons (amongst others) the law would not cast the immediate and actual possession upon him *nolens volens*; and therefore it was, that till actual entry he could not maintain an action of trespass or ejectment, because those actions, complaining of an immediate violation of the possession, could not be proper for him who had no actual possession. But the lessor having done all that was requisite on his part to divest himself of the possession, and pass it over to the lessee, had thereby transferred such an interest to the lessee, as he might at any time reduce into possession by an actual entry, as well after the death of the lessor as before, and such an interest as he might before entry grant over to another, or if he died before entry, would go to his executors; or, if the grant were made to two jointly, to the survivor and his executors, any of whom might enter at their pleasure, and so reduce the contract into an actual execution; for it was perfect and complete on the lessor's part, and the perfecting of it on the lessee's part was entirely in his own power, and left to his own discretion

Co. Lit. 46.
b. 51. b.
270. a.
Plow. 142.
b. 423. a.
5 Co. 124. b.
Cro. Jac. 61.
2 Mod. 249.
2 Vent. 203,
204.

to use when, and as he thought fit. And therefore this differed from a lease for life, or a feoffment in fee; for these being estates of freehold must necessarily be executed by livery of seisin, which carried the immediate and actual possession to the lessee or feoffee, in as much as the operation of the livery could not be in suspense for the prejudice that might thereby accrue to strangers, who, after such solemn transmutation of the possession by livery, could take notice of no other tenant of the freehold, and therefore must necessarily bring their *præcipes* against him for recovery of their rights; which if they might after be defeated and eluded on pretence of any disagreement, or that there was no actual consent or agreement thereto, and so the actual possession not vested in him, would be greatly injurious to the rights of strangers. Besides that, the livery can be made to none but the lessee or feoffee himself in person, or some other person lawfully authorized by letter of attorney to receive the same; and therefore he can no ways be supposed ignorant of the terms upon which he took it, and so no such reason for suspending the actual execution of it. And therefore if a lease were made to *A.* for life, the remainder to *B.* for life, and then *A.* died, a release to *B.* and his heirs, before actual entry, would be good to enlarge his estate, because he had the freehold in law in him, immediately upon *A.*'s death, to answer to the *præcipes* of all strangers, as fully as he could ever have it by any entry. But now in the case of a lease for years it is quite different, as has been shewn; and therefore till actual entry, which is an agreement on his part, in case of such lease for years, equivalent to the acceptance of livery in case of the passing of a freehold, the lessee for years hath not the possession; and as he hath not the possession, so neither hath the lessor a reversion to grant either to the same lessee or a stranger. But yet if a rent were reserved on such lease for years, and before actual entry of the lessee, or commencement of his lease, the lessor should release to him all his right in the land; though this would not be sufficient to carry the reversion * by way of enlargement of his estate, yet would it extinguish the rent, because every deed must be taken most strongly against the grantor, and to be made to some purpose or other; and since this cannot operate on the estate to enlarge that, or carry any further interest to the lessee, yet it may well operate upon the rent which was issuing out of the land, and coming to the lessor, in respect of the land he had departed with, and therefore shall be construed to extinguish and determine that rather than it shall be totally void.

* *Vide the next clause.*

2 Mod. 251. And this way of executing leases for years, by an actual entry, was always held necessary at the common law, and for a considerable time after the statute of uses likewise, till the way was found out of conveying a freehold by a lease for a year, and a release thereupon, according to the common form now used. For it being found troublesome and inconvenient to put the lessee under a necessity of making an actual entry in all cases before a release could be effectual thereupon to enlarge his estate, especially where the lands lay at any considerable distance from the place where the

the deeds were executed; therefore, to prevent this trouble and inconvenience for the future, they began to construe, that where the words and consideration were sufficient to raise a use, though it were but for a year, the statute would carry the actual possession after it, and consequently, make the lessee equally capable of enlarging his estate, by a release thereupon, as if he had actually entered by force and virtue of the lease: and the consideration, if it were valuable, though never so small, was looked upon to be sufficient for the raising of a use; and therefore 5 s. or such other consideration, came to be the standard in a lease for one year, which in time grew to be a thing merely of course and form, it being seldom or never paid, though the lessee, by his acceptance of the lease upon such consideration, was estopped to deny or aver against it. But because there were some opinions, that where a conveyance might enure two ways, either at the common law, or upon the statute, that there the common law should be preferred and take place; therefore, to bring the lease more effectually within the statute, they likewise inserted the words therein *bargain and sell*, which, together with the consideration, were held even at common law sufficient to raise a use; and then the statute, which came after, carried the possession accordingly, without any actual entry made by the lessee; and so the conveyance, by way of lease and release, grew in time to be the most common and easy method of transferring a freehold or fee, and has now continued for several years, almost to the disparagement of conveyance by livery. And to bring the lease still more effectually within the statute, it was afterwards used at the end of the lease to say, *That such lease was made to the intent, that by virtue of the statute of uses, the lessee might be in actual possession, and be thereby enabled to accept and take a grant and release of the freehold and inheritance thereof, &c.*

(N) Leases for Years, when to take Effect as a Reversion, when as a future Interest, and when neither the one nor the other.

IF one, having made a lease for life or years to *A.* of lands, after make another lease for years to *B.* of the same lands, or of the reversion of those lands, *habend.* the said lands, or the reversion of those lands, to the said *B.* *eum post five per mortem, resignationem, sursum redditionem, vel aliquo alio modo vacare contigerit*; in this case *B.* hath election to take such lease either as a reversion or a reversionary interest, if he can prevail for an attornment of *A.*, the tenant in possession; or if not, yet as a future *interesse termini* such lease will be good to take effect in possession upon the determination of the first lease, be it by death, surrender, forfeiture, effluxion of time, or any other way. The reason whereof is, that when the lessor has expressly departed with, and made over an interest to the lessee for such a time, and this interest cannot take effect in possession, because the lessor himself had not the possession to give, but

6 Co. 36.
Cro. Jac. 72.
Cro. Eliz.
152.
Leon. 171.
3 Leon. 17.
4 Leon. 23.
Bro. tit. Attornment,
41. 60.
Lit. § 576.
Dyer, 26. 2.
58. 324. pl.
40. 125. pl.
44. 178.
233. pl. 10.
117. pl. 76.
350. pl. 18.
376-7.

Bendl. 286.
 Plow. 148.
 150, 151.
 Bro. tit.
 Leases, 71.
 Yelv. 85.
 Brownl. 136.
 4 Co. 53.
 Dyer, 46.

but must therefore be carved and derived out of the reversion which the lessor had, the lessee *primâ facie* hath a reversion, or reversionary interest for the time, in the same manner as the lessor or grantor himself had; but then the perfecting such lease as a reversion, or a reversionary interest, to draw after it the rents and services, depending on the will and pleasure of the tenant in possession, whether he will attorn, and become tenant to such lessee or grantee, or not; if he thinks fit not to attorn, it cannot pass as a reversion or reversionary interest; yet this shall not totally invalidate and avoid such lease or grant, if by any other means it can be made good and become effectual; and this it may as a future *interesse termini*, to take effect in possession on the determination of the first lease, when or what way soever that happens; and therefore, as such, it shall take effect, rather than be absolutely void, when the lessor or grantor hath done all in his power to divest himself of the possession for so much a longer time. But then such second lessee hath an election to take it as a reversion, or reversionary interest only, when the lease is made to him by deed poll or indenture; for if it were made by parol, then he can only take it as a future *interesse termini*, to take effect in possession upon the determination of the first lease, when or which way soever that happens, and not as a reversion, or reversionary interest, to draw after it the rents and services, because a reversion cannot be granted to pass without deed; for a deed is of the very essence of the grant of a reversion, or reversionary interest, and without it no reversion, or reversionary interest can pass out of the lessor.

And this introduces a threefold distinction in the manner of making such leases for years, where there is a prior lease or estate then in being: 1st, When they are made by parol. 2^{dly}, When by deed poll. And, 3^{dly}, When by indenture or fine.

Plow. 421.
 b. 422. b.
 Bendl. pl.
 246.
 Cro. Eliz.
 160. Plow.
 432. 521.
 Hutt. 105.
 Bro. tit.
 Leases, 48.
 Moor, 185.
 pl. 329.
 Dyer, 112.
 Pl. 49.

As to the first, if one makes a lease to *A.* for ten years, and the same day makes a parol lease to *B.* for ten years of the same lands, this second lease is absolutely void, and can never take effect either as a future *interesse termini*, or as a reversionary interest, though the first lessee should forfeit or otherwise determine his estate, or though the first lease were on condition, and the condition broken within the ten years; neither shall the lessor have the rent reserved upon such second lease, but such second lease is absolutely void, as if none such had been made. The reason whereof is, because the first lease being made for ten years, the lessor during that time had nothing to do with the possession, or to contract with any other for it; and the second lease being made the same day, and for no longer term than the first ten years, could not pass any interest as a future *interesse termini* certainly; for the first lessee had the whole interest during that time; and his forfeiture or determination of it sooner, which was perfectly contingent and accidental, shall never make good the second lease as a future *interesse termini*, when at the time of making thereof it was absolutely void, for want of a power in the lessor to contract for it; and as a reversionary interest it cannot be good, for want of a deed; for a reversion, whether it be granted for life or years, not being

being capable of executing either by livery of seisin, or entry and transmutation of the possession, there can be no evidence of the creation or existence of such a grant, without a deed to ascertain it; and therefore a deed in such a case is as essential to the making good the grant, as livery of seisin or entry in the other cases, where they deal for the possession; and by consequence, this second lease not being good, either as a future *interesse termini*, or a reversion, must be absolutely void. But now if such second lease had been made for twenty years, then it had been good as a future *interesse termini* for the last ten years, and void for the first ten years, for the reasons before given. For the last ten years it had been good; because when the first ten years were elapsed, the second lessee might then execute, and reduce into possession by entry, as well as if it had been at first made in possession; for it had been good for the whole twenty years if the first lease had not stood in the way, and that can stand in the way no longer than it continues, and therefore by its determination lets in the second lease. But as a grant of the reversion such second lease could not be good, for want of a deed, for the reasons before given; neither could any attornment help it, or let in the second lease till the first ten years run out by effluxion of time.

But now, *2dly*, If such second lease had been made by deed poll, then it might well enure as a grant of the reversion, and draw after it the rents and services of the first lessee, if he would consent to attorn, and by consequence, whenever the first lease determined by surrender, forfeiture, or otherwise, such second lessee having the immediate reversion must come in for the residue of his term; but without such attornment to make it operate as a grant of the reversion, this second lease, though by deed poll, would be absolutely void, as if it were made only by parol, because during the first ten years the lessor had no power to contract for the possession; and therefore if this grant could not take effect as a grant of the reversion, which was all the lessor had a power of, it must likewise be absolutely void. But if such second lease by deed poll had been for twenty years, then with attornment this would be a good grant of the reversion presently, to take effect in possession whenever the first lease determined; or if no attornment could be had, yet it would enure as a future *interesse termini* for the last ten years, and would be absolutely void for the first ten years, as much as if it had been made by parol.

Vide the authorities cited above.

But now, *3dly*, and lastly, If such second lease for ten years had been made by indenture or fine, then this would have been good as a present lease, by reason of the estoppel to both parties by the indenture or fine, and therefore whenever the first lease determined, the second lease should commence in possession; and in the mean time the second lessee, by reason of the estoppel would be obliged to pay the rent reserved in an action of debt. And if such second lessee could prevail for an attornment, then this lease would enure as a grant of the reversion, and draw after it the rents and services of the first lessee, and would take effect in possession when-

Vide the authorities to the first distinction.

ever

ever that determined ; but without such attornment, though the second lease would be good between the parties, by reason of the estoppel, yet not as a reversion ; and therefore such second lessee could have no remedy for the rents and services of the first lessee.

Co. 155. a.
Cro. Eliz.
322.
Plow. 422.
a. 433. a.

So, if one had made a lease for life, or for eighty years, if the lessee should so long live, and after, by indenture, let the same lands to another for years, to begin presently, and then the first lease determined by death, surrender, or forfeiture, the second lessee should have the lands in possession presently, for the residue of the years, because such second lease, by reason of the estoppel, took effect between the parties presently, and therefore shall come in possession whenever the first lease is out of the way. But if such second lease were only by deed poll, then there must be an attornment to make it good as a grant of the reversion, as there must likewise in the other case, where it was made by indenture ; and without such attornment the second lease could only take effect in possession upon the determination of the first lease by the death of the lessee, according to the express limitation, and not upon any sooner or other determination by surrender, forfeiture, or otherwise ; much less, if such second lease were by parol, could it take effect upon any other determination of the first lease : for though in these cases the first lease, depending upon the life of the lessee, was uncertain how long it would continue, yet so long as it did continue, the first lessee had the sole and absolute possession, and the lessor no power to contract for any thing but his own reversion during that time ; and therefore if his second lessee cannot attain the reversion, the contract can take no effect for the possession till the death of the first lessee, because that being the lessor's own limitation affixed to such lease, he cannot deal for the possession before that time comes ; and therefore, no accidental determination of the lease sooner shall let in the second lessee, unless he can prevail for the reversion by attornment of the first lessee, in case of the lease by deed poll, or unless in case of the indenture, he shall, by reason of the estoppel, be let in whenever the first lease is out of the way, whether he obtained an attornment or not.

3 Leon. 17.
4 Leon. 23.
5 Co. 113.
Mallorie's
case.

But in all the cases before-mentioned, if such lease by indenture or deed poll were by way of bargain and sale for years, then, it should seem, it would pass as a reversionary interest presently, without any attornment, by force of the statute of uses, and it being only for years, there would need no enrolment of the indenture or deed poll.— And *note* : By the statute of frauds and perjuries, 29 Car. 2. c. 3. no parol lease for above three years is to have any other effect than only as a lease at will ; so that such parol leases now for ten or twenty years are out of doors.

(O) Leases for Years by Estoppel, how far and against whom such Leases are good.

IF one makes a lease for years, by indenture, of lands, wherein he hath nothing at the time of such lease made, and after purchases those very lands, this shall make good and unavoidable his lease, as well as if he had been in the actual possession and seisin thereof at the time of such lease made; because he having, by indenture, expressly demised those lands, is by his own act estopped, and concluded to say he did not demise them; and if he cannot aver that he did not demise them, then there is nothing to take off or impeach the validity of the indenture, which expressly affirms that he did demise them, and consequently, the lessee may take advantage thereof, whenever the lessor comes to such an estate in those lands as is capable to sustain and support that lease. And this estoppel by indenture is so mutual and reciprocal, that if a man takes a lease for years by indenture of his own lands, whereof he himself is in actual seisin and possession, this estops him during the term to say the lessor has nothing in the lands at the time of the lease made, but that he himself, or such other person, was then in actual seisin and possession thereof; for by acceptance thereof by indenture, he is, for the time, as perfect a lessee for years, as if the lessor had at the time of making thereof the absolute fee and inheritance in him. But if such lessee of his own lands, being ejected by the lessor, should bring an ejectment, and the lessor should plead not guilty, and give the lease and some matter of forfeiture thereof, in evidence, to support his plea without pleading, and rely on the estoppel, and the jury should find the special matter, viz. that the defendant had nothing in the lands at the time of such lease made, but that the plaintiff himself was then in actual seisin and possession thereof, whether the court, upon this verdict, are bound to adjudge according to the truth of the case, viz. that such lease by one who had then nothing in the lands was void; or if they are to adjudge according to the law, working by way of estoppel upon such lease by indenture, seems a doubt upon all the books. But my Lord *Coke* lays it down for a rule, that the jury do well to find the truth, viz. that the lessor had then nothing in the lands; but then, upon such finding, the court is to adjudge, according to the operation of law upon the estoppel wrought to both parties by the indenture, that they are bound. But if the jury, understanding that the lessor had nothing in the lands at the time of the lease made, and that therefore his lease could not be good in fact, but only by way of estoppel, and inferring from thence that they, who are sworn to say the truth, were not bound by such an estoppel, which was plainly against the truth, should therefore give a general verdict against the lease, that the defendant was guilty of the ejectment; in this case, says my Lord *Coke*, such jury are liable to an attainr. And this seems the better opinion; for though it be true that the jury are not bound by the estoppel,

Co. Lit. 47.
227. a.
Plow. 434.
4 Co. 53.
Cro. Eliz.
140.
Sav. 98.
Owen, 96.
Leon. 206.
Cro. Eliz.
362. Moor,
pl. 323.
2 Brownl.
150. Cro.
Car. 110.
2 Roll.
Abr. 871.
Cro. Jac. 73.

4 Co. 53.
Rawlins's
case. Co.
Lit. 47. b.

estoppel, and therefore may find that the lessor had nothing in the lands at the time of the lease made, which is a truth of fact, the lessee is estopped to affirm, and is the only subject matter of the estoppel; yet the consequence of such estoppel, and how far the lease is made good thereby against the parties, is matter of law, and not of fact; and therefore if they take upon them, first, to find that the lessor had nothing in the lands at the time of the lease made, and then to find that such lease is void; or, which is all one, to find that such lease was void, because the lessor had then nothing in the lands, as the essential cause which induced them to find such lease to be void, or that there was no such lease; in this they take upon them to judge the matter of law, and in so doing exceed their duty, and, consequently, if they are mistaken, lay themselves open to an attain; for, in truth of fact, there was such lease made, and, in truth of fact, the lessor had nothing in the lands at the time of making thereof; and all this is their duty, and belongs to them to find; but whether such lease, so circumstanced, be good, or void, is matter of law, for the court to adjudge, upon these circumstances; and therefore, if they will take upon them to anticipate the judgment of the court, by giving their own judgment thereon, they must do it at their own peril, and if they mistake, be liable to an attain.

Co. Lit.
47. b.
Roll. Abr.
371.

But if such lease for years were made by deed poll of lands wherein the lessor had nothing, this would not estop the lessee to aver that the lessor had nothing in those lands at the time of the lease made; because the deed poll is only the deed of the lessor, and made in the first or third person; whereas the indenture is the deed of both parties, and both are, as it were, put in and shut up by the indenture, that is, where both seal and execute it as they may and ought; for otherwise, if the lessor only seals and executes the indenture, the lessee seems to be no more concluded than if the lease were by deed poll; for it is only the sealing and delivery of the indenture as his deed that binds the lessee, and not his being barely named therein, for so he is in the deed poll; but that being only sealed and delivered by the lessor, can only bind him, and not the lessee, who is not to seal and execute it. And it should seem, that such lease by deed poll binds the lessor himself as much as if it were by indenture, because it is executed on his part with the very same solemnity, and therefore it should seem, he is bound by such lease by way of estoppel.

Co. Edz.
37. 700.
Co. Lit.
352. a.

And yet it is generally said, that these estoppels ought to be mutual, otherwise neither party is bound by them: therefore, if a man takes a lease for years of his own lands from an infant or feme covert by indenture, this works no estoppel on either part, because the infant or feme, by reason of their disability to contract, are not estopped; therefore, neither shall the lessee be estopped, because all estoppels ought to be mutual.

Roll. Abr.
371.

So, if a man takes a lease for years of his own lands by patent from the king, rendering rent, this shall not estop the lessee, as an indenture between common persons in such case would do; because the king cannot be estopped; for it cannot be presumed the king

king would do wrong to any person, and therefore being deceived in his grant makes it absolutely void. And if he be not estopped, neither shall the lessee; because all estoppels ought to be mutual. But perhaps there may be some difference between these cases of a bare acceptance of a lease from such persons, as by reason of their imbecility, incapacity, or other impediment arising from their own persons, could not make such lease, but that the same was either absolutely void, or at least voidable, on their part; and therefore the lessee may shew such incapacity, to avoid them, as made by persons who wanted power or ability to contract; and so the whole contract must fail, not for want of a sufficient estate in the lessors, (for if they were of full age, and sole, &c. that would not be material,) but for want of a sufficient power or ability to contract. But when such lease is made by a man of full age, though by deed poll, why this should not bind and estop him as well as if it were made by indenture, seems hard to understand; for he hath executed it on his part with the same solemnity; and though it cannot bind or estop the lessee, because he never executed it, yet why that should invalidate it on the lessor's part, whose deed it was, and who did all he could to bind himself, does not seem very intelligible. Besides that, the books, which put the case of the lease by deed poll, saying only that the lessee is not estopped thereby, seem to allow that the lessor is notwithstanding estopped; for otherwise they would take notice of their being both at large, as they do in other cases.

If lessee for years accepts a lease for years of a stranger by indenture, who hath nothing in the reversion, this is a good lease by way of estoppel between them, and not a confirmation; for nothing appears that the lessor knew the lessee then had any thing in the lands, and then it is the same with the other cases, and works by way of a bare estoppel; but *Fenner* thought it a confirmation, against all the other judges.

Roll. Abr.
871. Style
and Herring.

If one lets lands to me, by deed enrolled, unknown to me, and brings debt upon the lease, I may say *ne lesso pas*, as *Littleton* held; but by all the justices, he who made such lease is concluded to say the contrary. This case seems to be an authority in point to establish what has been laid down, that in case of a deed poll, (as this which is called a deed enrolled must be intended to be,) the lessor himself is estopped, though the lessee be at large; and this cannot be intended an indenture, because then the lessee would have been estopped likewise, if he had sealed it, which in this case it appears he did not, because it was unknown to him, and therefore was not estopped, whether it were by indenture or deed poll.

Bro. tit.
Leases, 36.
7 E. 4. 29.

These estoppels continue no longer on either part than during the lease, for as they began at first by the making of the lease, so by determination of the lease they are at an end likewise; for then both parts of the indenture belong to the lessor.

Co. Lit.
47. b.
4 Co. 54. a.
8 Co. 44.
Cro. Eliz. 36. Roll. Abr. 877.

When an interest actually passes by the lease, there shall be no estoppel, though the interest, purported to be granted, be really greater than the lessor at that time had power to grant; as if *A.*

Co. Lit.
47. b.
Vent. 358.
& vide

lessee

Skin. 3.
 Carth. 247,
 248.
 Salk. 275.
 pl. 1.

lessee for the life of *B.*, makes a lease for years by indenture, and after purchases the reversion in fee, and then *B.* dieth; *A.* shall avoid his own lease, though several of the years expressed in the lease are still to come; for he may confess and avoid the lease which took effect in point of interest, and determined by the death of *B.* So, if lessee for ten years makes a lease for twenty years, and afterwards purchaseth the reversion, yet it shall bind him for no more than ten years, for the same reason; because when he made a lease for twenty years, this was certainly a good lease for ten years, and so far an interest passed, which he may confess, and avoid it for the residue, by saying that he had no more than for ten years in it himself; *sed quare* of this? for the reason seems not satisfactory.

2 Lev. 140.
 3 Keb. 490.
 Ree and
 Williamson.

In ejectment, plaintiff declared of a lease for five years, and upon not guilty pleaded, the jury found that the lessor of the plaintiff had only a term for three years in the lands leased, & *fc.* *Hale* held this verdict against the plaintiff; for the judgment should be, that the plaintiff *recuperet terminum suum predictum*, which is five years; and here the lessor's interest does not continue so long, and perhaps the defendant may be the reversioner after the five years ended, and then by this means the plaintiff's lessor will recover the land for two years more than he hath right to do; and he said, that for this reason, he had before caused another plaintiff to be nonsuit; *Wild* was of the same opinion, but *Twissden* inclined *cont. & adjournatur*.

Co. Lit.
 47. b.
 Roll. Abr.
 371.

If a man takes a lease for years of the herbage of his own land by indenture, this is no conclusion to say that the lessor had nothing in the lands at the time of the lease made, because it was not made of the lands themselves.

Roll. Abr.
 377. Cro.
 Eliz. 701.
 Breerton v.
 Evans.

If baron and feme join in a lease for years by indenture, rendering rent, where the baron hath all the estate, and the wife nothing; in this case, after the death of the baron, the lessee, in an action of debt brought by the feme, shall not be concluded to say, that at the time of the lease made the feme had nothing in the lands; for this shall not enure by way of estoppel, because an interest actually passed, though not from the feme. But another reason given is, because the feme being covert was not estopped, and, by consequence, neither shall the lessee, because all estoppels ought to be mutual.

Co. Lit.
 45. a.
 Roll. Abr.
 377. Cro.
 Eliz. 701.

If tenant of the land, and a stranger, join in a lease for years by indenture, this is the lease only of the tenant, and the confirmation of the stranger; and yet the lease operates, as to the stranger, by way of conclusion, and so it does to the lessee with respect to the stranger, because he having nothing in the lands, the indenture could no otherwise take effect as to him.

Co. Lit.
 45. a.
 Roll. Abr.
 377.

If *A.* seised of ten acres, and *B.* of other ten acres, join in a lease for years by indenture, these are several leases, according to their several estates, and no estoppel is wrought by the indenture to either party, because each have an estate whereout such lease for years or interest may be derived; and the reason why estoppels at any time are allowed, is, because otherwise, when the party hath

hath nothing in the lands, the indenture must be absolutely void, which would be hard to say, when he hath, under hand and seal, done all in his power to make it good; and since it can be good no otherwise, it shall be good by estoppel, rather than be absolutely void. But when an interest passes from each lessor, the indenture works upon such interest to carry that, and therefore leaves no room for its operating by way of estoppel. But since both equally joined in the lease, without distinguishing the several interests they had therein, the indenture works by way of confirmation, with respect to each from whom the whole interest did not pass; that is, as *A.*'s confirmation for *B.*'s part, and as *B.*'s confirmation for *A.*'s part; for since the lease of the whole was undistinguished, and by reason of the several interests that passed from each, excludes any estoppel, therefore, rather than the indenture shall be void, with respect to the part of each other, it shall be construed a several confirmation by one of the other's part, and by the other of the other's part, which is the least operation the indenture can have with respect to each, from whom no interest passes, without being absolutely void.

So, if two tenants in common of lands join in a lease for years, by indenture, of their several lands; this shall be the lease of each for their respective parts, and the cross confirmation of each for the part of the other, and no estoppel on either part; because an actual interest passes from each respectively, and that excludes the necessity of an estoppel, which is never admitted, if by any construction it can be avoided, as being one of those things which the law looks upon as odious, because it chokes and disguises the truth.

Roll. Abr.
877.

But if two joint-tenants for life, or in fee, join in a lease for years by indenture, reserving rent to the one of them only, this shall give him the rent exclusive of the other; and here the estoppel turns not then upon the interest passed by the lease, for that is several, according to their several rights, as in the other cases, which excludes any estoppel; but it turns upon the reservation of the rent, which being made in this manner, to one exclusive of the other, by indenture, works an estoppel against all the parties to say the contrary; and though the rent issues out of one part as well as the other, yet it not being part of the thing demised, but moving, as it were, rather by way of grant from the lessee after the lease made, the lessors are considered as accepting it in this manner by indenture, which concludes them as well as it doth the lessee. But if the lease had been by parol, or deed poll, reserving rent to the one joint-tenant only, this would not have excluded the other joint-tenant from an equal share therein, because this reservation coming, as it were, by way of grant from the lessee, and being only by parol, or deed poll, could not estop or conclude the lessors, who, with respect to the rent, were as it were grantees, and only passive therein; and the rent shall follow the reversion in proportion to their several estates in that, as the cause for which the rent was reserved or granted in that manner, and so let in both to an equal participation thereof.

Co. Lit.
47. a.
Roll. Abr.
878.

Roll. Abr.
878. Moor,
pl. 939.
Milliner v.
Robinson.

If two coparceners join in a lease for years, by indenture, of their several parts, this is said in one book to be but as one lease, because they have not several freeholds therein, but only one, as both making but one heir, and therefore shall join in an assise. But *Moor* is *cont.* where in ejectment the plaintiff declared of a lease by two coparceners *quod dimiserunt*; and exception being taken to it, the exception was allowed, because the lease was several as to each coparcener, for her respective moiety. And this seems the better law, because though they have but one freehold with regard to their ancestor, and therefore if they are disseised shall join in an assise, yet as to their disposing power thereof they have several rights and interests, so that neither of them can lease or give away the whole.

Roll. Abr.
874. 876.
Omelaugh-
land v.
Hood.

If *A.* mortgages lands to *B.* upon condition to re-enter on payment of 10*l.* and after *A.* before the day of payment is come, being in possession, makes a lease for years, by indenture, to *C.*, and then after performs the condition, this shall make the lease to *C.* good against himself by estoppel; and it was farther adjudged, that even the feoffee of *A.* should be bound by this lease, which took its effect only at first by estoppel; because he coming in under one who was estopped, should be himself estopped likewise, which was still a stronger case than the first. And this was adjudged in *Ireland*, and afterwards affirmed on a writ of error here, and seems a very reasonable judgment; for if a subsequent purchase shall make good a lease of lands by indenture, though the lessor had nothing in those lands at the time of the lease, and therefore his lease at first could only take effect by estoppel; much more in this case, where the lessor had a possibility of coming into the lands again, shall his performance of the condition after make good the intermediate lease. And so it should seem too if the condition were broken at the time of the lease, so as he had then nothing but an equity of redemption; yet if he should after be admitted to redeem in Chancery, this would make good the intermediate lease which took effect at first only by estoppel.

Co. Lit.
45. a.
Dyer, 234.
Moor, pl.
146. Poph.
57. Moor,
pl. 939.
6 Co. 14, 15.

B. tenant for life of *C.*, and he in the remainder or reversion in fee join in a lease for years by indenture; this, during the life of *C.*, is the lease of *B.*, who then only had the present interest in the lands, and the confirmation of him in the remainder or reversion; but after the death of *C.* then this becomes the lease of him in the reversion or remainder, and the confirmation of *B.*, for the lessors having several estates in them in several degrees, the lease shall be construed to move out of each one's respective estate or interest as they become capable of supporting thereof; which is the most natural and useful construction of the lease, especially as there can be no estoppel in this case, by reason of the several interests which passed from each; and therefore during the life of the tenant for life, if the lessee, being evicted, should declare of a lease by both, this would be against him, as was adjudged, because for that time it was only the lease of the tenant for life.

(P) Leases for Years and future Interests, how far they may be barred or destroyed, and how far not, and where an Entry before the Term begun is a Disseisin.

IT has already appeared, that all leases for years at the common law, when they come *in esse*, are to be executed by the entry of the lessee. We shall therefore now consider what care the law has taken for the preservation and security of such leases as are limited to begin at a future time, and so cannot be executed by entry presently; what power the lessee hath over such an interest, and whether by any, and by what acts, either of the lessor, or strangers, the same may be barred and prevented from ever taking effect.

As to future interests, if one make a lease for years, to commence after the death of a tenant for life, or after the end of a lease for years then in being; and after the death of the tenant for life, or expiration of the term for years, a stranger enter by tort, yet may the lessee of the future interest grant over his term for years, before or without any entry made, and thereby transfer over his power of entering and reducing it into possession to the grantee: for till entry of the lessee of such future interest, the lease is not executed, but remains in the same plight as it was upon the first making thereof, and then no intermediate acts, either of the lessor, or of strangers, can disturb or hurt it; because whoever comes to the possession, whether by right or wrong, takes it subject to such future charge, which the lessee may execute by his entry whenever he thinks fit, as by a title prior and paramount to all such intermediate violations of the possession. But if the lessee of such future interest had once entered after the death of the tenant for life, or end of the lease for years, and had after been put out, then he could not grant over his term and interest to a stranger, because by his entry the lease was actually executed, and being after defeated by the entry of another, he had only a right of entry left in him; which right of entry the law will not suffer him to transfer over to a stranger any more than a right of action; and for the same reason, because in both cases it may encourage champerty and maintenance: but in the other case, where he hath not entered, he only transfers over such interest as he himself had, which the tortious entry of the stranger had not disturbed or altered from what it was at the first making thereof.

So, if one makes a lease for years, to begin two years hence; after the two years expired, before any entry, and whilst the lessor continues still in possession, the lessee may grant over his term and interest to another; because his *interesse termini* was not devested or turned to a right, but continued in him in the same manner as it was at first granted; and in the same manner he

Cro. Elis.

15.

5 Co. 124.

3 Leon. 136.

158.

3 Mod. 198.

Cro. Elis.

127.

Leon. 118.

Wheeler v.

Thorough-

good.

transfers it over to another, who by his entry may reduce it into possession whenever he thinks fit.

5 Co. 123.
Cro. Jac. 60.
Saffin's case.
Leon. 99.
3 Mod. 198.
Ld. Raym.
179.

One made a lease for years, to begin after the end or determination of a former lease for years then in being; the first lease determined; and before entry of the second lessee, he in reversion entered, and made a feoffment in fee, and levied a fine with proclamations, and five years passed without entry or claim of the second lessee; and if his term was barred, was the question? And it was adjudged, that by this fine and non-claim his term was barred, because after the first lease expired, the second lease was actually then come *in esse*, and reducible into possession by an entry presently; and then his not entering, which was his own fault, and laches, could not stop the operation of the fine from running against him. But if such fine had been levied during the continuance of the first lease, there, it was agreed, that the operation thereof should not begin to run out against the second lessee till the first lease were determined; because till then the second lease was only an *interesse termini*, which the second lessee could not reduce into possession by any entry till the first lease determined, and so was not obliged to take notice of the acts of strangers, or of the ter-tenant in possession; for if such future interest might be divested before it came *in esse*, the lessee or grantee thereof having never entered, would have no means to re-vest it, and therefore till it comes *in esse*, the law takes care and secures it to the lessee or grantee in the same manner as it was at first granted: but when the first lease is at an end, then the second lessee is to take care of it himself; and if he suffers five years to elapse after that time without entry or claim, this will bar such interest, because his right then commences in possession, and thenceforth the operation of the fine begins to run on against him. And where in *Noy* it is held, that if *A.* leases to *B.* for years, but yet *A.* still continues in possession, and after levies a fine with proclamations, and five years pass, that this does not bar the term of *B.*, but only carries the reversion of *A.*, this case was denied by *Twissden* to be law, for till the entry of *B.* the lessor hath no reversion; and therefore the fine can only operate on the possession.

Noy, 123.
Archbold
v. Cook.
Vent. 87.
Sid. 459.

2 Leon. 99.
Cro. Eliz.
169. Roll.
Abr. 605.
Dyer, 89.
56. 2 Roll.
Abr. 120.

As the lessee must enter when his lease continues in possession, so if he enters before, this is a disseisin: therefore, where one brought debt for rent, and declared upon a lease 29 *Septemb. habendum* from the feast of *St. Mich.* next ensuing for twenty-one years, rendering 10*l.* per ann. rent, *virtute cujus* defendant 29 *Septemb.* entered, &c. on *nil debet* pleaded, and found for the plaintiff, it was moved in arrest of judgment; that here, by the plaintiff's own shewing, there is no rent in arrear, for he says *virtute cujus* defendant 29 *Septemb.* entered, which is a day before the commencement of the term; and then such entry is a disseisin, because he hath then no right to enter: and this the court clearly agreed, and that no continuance of possession, though after the term actually begun, would purge the disseisin or alter the estate of the lessee: but yet they agreed that debt lay for the rent in respect

respect of the privity of contract upon the lease made, but that the disseisin having gained a tortious fee, that should not give way to the term for years, though it were legal, being but a chattel.

So, where *A.* made a lease to *B.* 23 *Septem. habendum* to him for eighty-one years from *Mich.* next ensuing, if *C.* should so long live, and from and after the day of the death of *C.* for thirty-one years more; the lessee enters the 23 *Septemb.*, and so, before the commencement of the term, continues in possession for some years; then the lessor re-enters, and the lessee being out of possession after the death of *C.* and during the continuance of thirty-one years, assigns over that term to the plaintiff's lessor, who being kept out of possession, brings ejectment, and recovered. 1. It was held, that the term not being to begin till *Mich.*, this was till then a future interest, and the lessee's entry before was a disseisin, and not a possession, by virtue of the lease. 2. That whether this lease for thirty one years were only a continuance of the first term, and that both together made but one term, as *Bridgeman* held, because the last day of the life of *C.* shall be conjoined to the first day of the thirty-one years, and so no fraction be allowed, especially being for eighty-one years, which *B.* cannot be supposed to outlive; or whether they were two distinct terms, as others held; yet either way it was not turned to a right by the entry of the lessor, because *B.* was not possessed by virtue of the term, but by disseisin, and to purge that was the entry of the lessor; for if a stranger had entered after *Mich.*, and disseised the lessor, this would not have turned the term to right, because as to that the time for entry of the lessee was not come, nor was his entry in respect of that; no more will the entry of the lessor turn it to a right, and then it was well assignable to the plaintiff's lessor, especially if it should be taken as a future interest, as some held it should; for then the lessee was never in possession by virtue thereof, and consequently the lessor's entry could not turn it to a right.

Lev. 45.
Keb. 54.
Hennings v.
Brabazon.

But where one declared of a lease 16 *April, habendum* from the *Annunciation* last past for ten years, *virtute cujus intravit, & habuit tenementa prædict.* from the said *Annunciation*; this was held good, and that the lessee was no disseisor; for it shall be intended that he entered and occupied before by agreement, and a diversity was taken between this case, where the commencement of the lease is limited from a time past, and where it is limited to begin at a time to come; there, the entry of the lessee before that time, is a disseisin.

Cro. Eliz.
905.
Waller v.
Campian.

(Q) How far, and by what Means, Leases for Years in Trust to attend an Inheritance may be barred or destroyed,

Gro. Car.
110. *Isham*
v. *Morris*.

IF lessee for years assigns over his lease in trust for himself, and after purchases the inheritance, and occupies the land, and then levies a fine with proclamations, and the lessee does not claim this lease within five years after the fine levied, this fine and non-claim will bar the interest of the lessee, though he who levied the fine had himself the possession by reason of the trust; for this trust passed included in the fine, and the trustee not making claim within the five years, his interest is barred thereby, and, consequently, so is the interest therein of the *cestui que trust*. But note; it appears in other books (a), where this resolution is cited, that the conusee was a purchaser of the estate, and then having no notice of the term, nor having made any agreement for it, to have it assigned in trust for himself, if the fine had not barred it, and it might have been set up against his purchase, he would have been so far cheated. But it is said, it would have been otherwise, if by agreement, this term had been to be assigned in trust for the conusee; and that, upon very good reason: for he who hath the inheritance in trust, for whom a term or estate by extent is assigned, must be taken as tenant at will to his trustee, and then his possession is the possession of the trustee; the consequence of which is, that the fine levied by him who hath the inheritance will work only upon that, when it appears that it was so intended, and that the term should be kept on foot, and not barred; whereas in the case of *Isham* and *Morris* there does not appear to have been any such intention, nor does it appear that the conusee knew any thing of the term.

(a) 2 Ventr.
329.
1 Sid. 459.
1 Lev. 272.

Hammer v.
Eyton,
Comb. 67.
See also
1 Ch. Rep.
37. 33.

Hard. 400.
Focus v.
Salisbury.

[So, where *A.* had a term of years vested in him for securing children's portions, and *B.* being in possession levied a fine, and five years passed without any claim being made; it was resolved by the Court of King's Bench, that, admitting the term was in trust, it was barred by the fine.]

A. seised of lands, for continuance thereof in his name and blood, &c. makes a lease to *B.* for five hundred years, in trust for himself during life, and after in trust for his brother, and so to others; and after, *A.* being in possession according to the trust, covenants with *D.* to stand seised of those lands, upon the same considerations as in the lease, to the use of himself for life, with remainders over, as in the lease, and upon the same trusts; and that the said lease, and all estates made or to be made by him should be to the same uses and trusts; and then *A.* levies a fine, and five years pass, *A.* still continuing in possession according to the trust, and after *A.*'s death the lessee enters; and if this lease was barred by the fine and non-claim for five years, was the question? No judgment appears to have been given: but *Hale* seemed

to

to be of opinion that it was not, because here appeared no intent to bar it; for *A.* was but tenant at will, and the fine did not displace the lease; as, if lessee for years levies a fine, and five years pass, the lessor is not barred, because *nihil operatur* by the fine, ^{2 Vez. 481.} and *partes finis nihil habuerunt* may be pleaded to it: otherwise it would be, if such fine had been levied by the tenant for life: therefore, where lessee for years intends to levy a fine, it is usual for him first to make a feoffment, whereby he transfers the whole and present possession and fee to the feoffee, and then the fine operates upon the whole estate so united in the feoffee; but here *the lease for years was antecedent to the estate of the lessor* upon which the fine operates, and was subsisting in another person, viz. in the lessee, at the time of the fine levied. And he cited the Duchess of Richmond's case (a) in *C. B.*, which is said to be the same *in terminis*, and to be so adjudged, 1. Because the lessor was only a tenant at will, and there was a mutual confidence between them: 2. By reason of the privity that was between them. And he also cited one *Heal's* case, where *A.* conveyed lands in fee to *B.*, with a covenant to make further assurance, then *B.* let to *A.* for forty years, and then, on request, *A.* makes further assurances; the lease is barred without precedent agreement to the contrary, for that would have saved the lease, and then the further assurance would have been taken only to operate by way of corroboration and further confirmation of the lease. But the principal case in *Hard.* seems to be very darkly put in the book; for it does not appear to whom the fine was levied; and the notion of the term being antecedent to the fine, and therefore not barred for that reason, seems strange; for if it were subsequent, it could not most certainly be touched by the fine; and there in another book this case is cited as a case in point, that the term is barred by the fine; and this seems agreeable to some of the following resolutions.

(a) Corbet
v. Stone,
Sir Thomas
Raym. 140.

Lev. 271.

It was held *per curiam*, that a fine levied in pursuance of a trust cannot destroy any lease made by *cestui que trust*. But though a fine levied by *cestui que trust* does not destroy or extinguish the trust, yet it is not safe to do it, for the danger of not being able to prove an agreement to the contrary.

Keb. 24-5.

A. seised in fee makes a lease to *B.* for an hundred years, in trust to attend the inheritance, *B.* enters, then *A.* enters, and receives the profits, and after makes a lease for fifty-four years, and covenants to levy a fine *sur consueance de droit*, to confirm that lease, and a fine is afterwards levied accordingly, and five years passed without any claim made by *B.* And it was adjudged in *C. B.* and affirmed afterwards upon error in *B. R.* 1. That when *A.* entered upon *B.* he was but tenant at will to him, to which estate it is not always requisite that there be the express consent of both parties; but if there be any thing tantamount, it is sufficient; as here the trust implies, that the lessor shall take the profits, being *cestui que trust*, which includes at least an estate at will. 2. That when *A.* made the lease for fifty-four years, though this would not be a disseisin, because the reversion was in the

Vent. 55.
80. Sid.
349. 458.
Lev. 270.
2 Keb. 523.
597. 650.
Freeman v.
Barnes.
3 Mod. 196.
S. C. cited.

lessor himself, who made that lease, yet by this the lease for an hundred years was divested, displaced, and turned to a right. And, 3. that being so divested, this was barred by the fine and non-claim. And it was held, that *A.* only should have the term of an hundred years, divested or not, and not *B.*, who was but his trustee; and in this case *A.* hath made his election by levying the fine to corroborate the term of fifty-four years, and there is no reason that *A.* should have the land against his own fine: besides, if the term of an hundred years should not be barred by the fine and non-claim, then *B.* must have it, which was never intended; and it is but reasonable such term should be subject to be barred or extinguished by *cestui que trust* of that and the inheritance. And a general rule was taken in this case, that when the lessee at will, or he who enjoys the land by express or implied assent of his grantee or feoffee, makes a lease for years, or levies a fine, this shall be construed an ouster, disseisin, or bar, when such construction tends to the establishing of a lawful estate, as in the principal case; but when such construction tends to the destruction of an honest estate or interest, then such lease or fine shall be no ouster, disseisin, or bar; and therefore *Keeling*, Chief Justice, put these two cases: If one makes a lease for years, for security of money by way of mortgage, and as the course is, continues in possession, and takes the profits, and then levies a fine to *J. S.*, and pays the interest duly, and the five years without notice or claim pass, this shall be no bar to the lease of the mortgage: So, if one purchases lands, and for the better security hath a long lease assigned to *J. S.* in trust to attend the inheritance, and then take the inheritance to himself by fine, and five years pass, and there are mortgages made in time after the first lease made, and before the fine levied; yet such fine does not destroy the first lease to *J. S.*, but the purchaser may use it to defend himself against the incumbrances; and he thought this difference would reconcile all the books.

[See acc.
2 Vez. 482.]

3 Mod. 195.
Smith v.
Pierce.

One by will devises lands to trustees for ninety-nine years, in trust for the payment of his debts and legacies, remainder to *A.* his brother in tail; but if *A.* gave security to pay the said debts and legacies, or should pay the same within such a time, then the trustees should assign the term to him, &c. *A.* entered after the death of his brother, with the assent of the trustees, and received the profits, and paid all the legacies, and also all the debts but 18*l.* and afterwards *A.* levies a fine to the use of himself for life, remainder to his wife for life, with divers remainders over, and dies, leaving his wife, and one only daughter, his heir at law; the wife entered, and five years were past without any claim; and now the daughter, in the name of the trustees brought an ejectment; and the questions were, 1. Whether this term for ninety-nine years was bound by the fine and non-claim? 2. Whether it was divested and turned to a right at the time of the fine levied? for if it were not, then the fine would not operate upon it. No judgment appears to have been given in it; but upon the difference taken in *Freeman* and *Barnes's* case, it should seem not

not to be barred; for then it must turn to the prejudice of honest creditors, who were strangers and third persons; and *A.* by his entry on the trustees could be only tenant at will, because his entry was with their consent, and no manner of intent appears in him to divest their estate or interest, and then his fine shall operate only on his own estate-tail, like a fine levied by a mortgagor, who is but tenant at will to the mortgagee, and whose acts being by permission of the mortgagee, shall not turn to his prejudice; though some said, the five years and non-claim passing in the lifetime of the wife, who was the survivor, made a great difference in the case; *ideo quere.*

If one takes an assignment of an estate extended upon a statute in the name of *J. S.* in trust to attend the inheritance which he hath in himself, and after he by lease and release, and fine levied in pursuance thereof, conveys that reversion and inheritance to another, and five years pass without any claim made by *J. S.* the trustee; yet this will not bar the estate or interest upon the extent, if it appears that the conusee of the fine was a purchaser of the whole estate, and so after his purchase *J. S.* to be trustee for him of the statute interest; for in such case the fine shall operate only upon the inheritance, and not to the barring of the statute interest, which is to attend and go along with the inheritance by way of trust for the purchaser. But if the purchaser had no notice of such statute interest standing out, nor was by agreement to have the trust thereof upon his purchase, then, rather than he should be cheated thereby, the fine of *cestui que trust* should operate to the barring of his own trustee.

2 Vent. 329,
330.
Dighton, v.
Greenvil.

Upon evidence to a jury at the bar, on trial of an issue out of Chancery, it was agreed, that if one makes a lease for an hundred years in trust for himself and his wife, and afterwards they both join in levying a fine to a purchaser, for a valuable consideration, who had no notice of this lease in trust, though the fine does not convey the term itself to the conusee, the estate in law being in the trustee, yet this destroys the trust, so that the lease shall not hurt the purchaser.

3 Keb. 564.

These reasons and resolutions seem to make it manifest, that in the case of *Focus* and *Salisbury*, if the conusee of the fine were a purchaser for a valuable consideration without notice of the term, then the fine would so destroy the trust of that term, that it should not hurt him: but if the fine were only in pursuance and corroboration of the former estates, then there would be no reason in the world that it should operate so as to destroy the term.

Hard. 400.

(R) Leases for Years, when merged by Union with the Freehold or Fee.

ANOTHER way, whereby a term for years may be defeated, is by way of merger, where there is an union of the freehold or fee and term for years in one person at the same time: in this case

case

case the greater estate merges and drowns the less; because they are inconsistent and incompatible. And yet there are several exceptions out of this rule, not only where such union is transitory, but even where it is permanent and continuing.

Co. Lit.
52. a.
Moor, 11.
280. 605.
Cro. Jac.
177.
2 Roll.
Abr. 495.

First then, if a man makes a lease for years to *A.* and afterwards makes a feoffment in fee to *B.* with a letter of attorney to *A.* to make livery, and he makes livery accordingly, yet this shall not drown or extinguish his term, because he did it only as servant to the lessor, and in his stead and right, and the feoffee after livery made is in by the lessor, and claims nothing from the lessee: neither shall his term pass, merged, or be confounded in the fee, which by the livery he gave to the feoffee, because he gave it only in right of the lessor, and not in his own right; though perhaps, to secure his term, and settle the reversion (which was all that was intended to pass) in the feoffee, it may be proper for him after such livery to make an entry for his term, because the livery gave the actual possession, though the agreement and intent of the parties will direct it so as to transfer only the reversion expectant upon that term after the lessee hath re-entered.

7 Co. 48. a.
66. a.
Moor, pl.
345. Che-
ney's case.

If the lessor enfeoffs his lessee for years to several uses, the interest of the lessee is saved by 27 *H. 8. c. 10.* of uses which saves to all persons, and their heirs, which be or shall be seized to any use, all such former right, title, entry, interest, &c. as they might have had to their own proper use, in or to any manors, lands, &c. whereof they be or shall be seized to any use, as if that act had not been made; and therefore in such case his term being saved expressly by this act, he may enter and enjoy it, as if the feoffment to uses had been to any stranger.

Cro. Jac.
643.
2 Roll.
Rep. 245.
Ferrers and
Curson.
2 Mod. 234.
decreed.

A. leases to *B.* for years, and after the lessor by indenture enrolled and fine conveys those very lands to the lessee, and others, and their heirs, to the use of them and their heirs, to the intent that a common recovery should be had and suffered against them, with voucher of the lessor, and that he should vouch over the common vouchee, to the use of *D.* and *E.* and their heirs; all which was done accordingly; and the question was, if by all or any of these acts the term were extinct and gone? for the reversioners, who were in under the recovery, brought debt against *B.* the lessee for rent. And on *nihil debet* pleaded, and all the said special matter found, it was adjudged, that the term still had continuance, and was not merged; for although it was merged and extinct by the union of estates till the recovery came, yet when that was suffered, the uses thereof were guided by the bargain and sale enrolled, and then it is all one as if it had been no conveyance or assurance to such uses *ab initio*, and is within the equity and intent of the saving of the 27 *H. 8. c. 10.* and is like a feoffment to uses, and the term and rent are revived; for the intent of the statute was not to hurt those who had estates, but to preserve them. And it was agreed *per totam cur.* that if a fine or feoffment had been made or levied to the lessee for years, that the term would not have been extinguished, but should be preserved by 27 *H. 8. c. 10.* The objection against all this was, that the bargain and sale

sale and fine were to his own use, otherwise he could not have been tenant to the *præcipe* for suffering the common recovery, and therefore, being to his own use, there was nothing to be saved within that statute. But it was answered and resolved, for the former reasons, that his own term was saved within the equity and intent of the statute.

One seised of lands in fee makes a lease to *B.* of ninety-nine years, to such uses as he should by his last will direct: afterwards he makes his will in writing, (having then no issue by his wife, but who however was *privement enseint*,) and thereby devises these lands to the heirs of his body on the body of his wife begotten, and for want of such issue, to *B.* and his heirs, and dies; and about a month after a son was born, who by virtue of this devise enjoys the land, and after his full age suffers a common recovery, and then devises the lands to the plaintiff, and dies: the plaintiff brought this bill against *B.* to have this lease of ninety-nine years assigned to him. For the defendant it was objected, 1. That an estate in fee being by the will limited to *B.*, who was also lessee for ninety-nine years, the term was thereby drowned. 2. That this was in nature of a devise to an infant *in ventre sa mere*, which, as was objected, is not good, if there be none born at the time when the devise should take place. Notwithstanding these objections, it was decreed, that the defendant should assign the term to the plaintiff; for that such devise to an infant *in ventre sa mere* is good as an executory devise, and though the lands descend to the heir at law in the mean time, or go to the devisee in this case, yet it is subject to be defeated by the coming *in esse* of the infant, and the term for years in the mean time was only suspended, and, by consequence, must revive in the lessee when the accession of the inheritance, which occasioned that suspension, is defeated: and the term being created subject to the uses of the will, must follow the devise of the inheritance, as a trust to be disposed of as the *cestui que trust* shall direct.

2 Mod. 3, 9.
Nurse and
Yearworth,

If one make a feoffment in fee to the use of himself for years, without limiting any other estate, the use shall not result to him in fee, because that would merge the term, against the express declaration and manifest intent of the parties; and therefore, in such case, the reversion in fee must continue and settle in the feoffee.

Dy. 111. b.
in margin.
per Popham
and Ader-
son.

In ejectment the case was thus: *Cook* let to *Fountain* for ninety-nine years, and two years after by lease and release *Cook* conveyed the inheritance to *Fountain* and another, to the use of *Cook* and the heirs of his body, with divers remainders over; and if by this conveyance the lease for ninety-nine years was merged and destroyed in all, or in part, was the question? First, it was agreed, that if such conveyance to uses had been by fine or feoffment, it would not have been destroyed, but would have been preserved by the saving in 27 H. 8. c. 10. So likewise they agreed, that if there had been no lease for a year, but the release had been immediate to the lease for ninety-nine years to such uses, in this case also the lease for ninety-nine years had been preserved by force of that statute:

2 Lev. 126.
Mod. 107.
3 Keb. 283.
309. Cook
v. Fountain.
Freem. 384.
392. S. C.
Wigston v.
Garrett,
Freem. 411.

Leases and Terms for Years.

statute : but here being a lease for a year precedent, it was argued, that this was to the use of the lessee, and then, by acceptance thereof, he admitted the lessor's power to make such lease, and by consequence, this was a surrender of the lease for ninety-nine years, before the release to the other uses came to take place, and then the release after cannot revive it. And it was said, though this be all one conveyance, yet it differs from a feoffment ; for it will not purge a disseisin, nor make a discontinuance ; and if before the release the lessee grants a rent-charge, acknowledges a statute, confesses a judgment, or makes a lease for half a year, and then a release is made to him and his heirs to such uses ; yet it was said, that he who hath the inheritance would have no remedy to avoid these charges, but in Chancery. On the other side it was argued, that this was no merger of the ninety-nine years lease ; or if it were, yet for no more than a moiety ; for the reason of merger and extinguishment is not, as hath been argued, the party's admittance of the lessor's power to make a lease, but the merger is effected by the accession of the immediate reversion to the particular estate ; and therefore a new lease by the lessor to his lessee is not a merger or surrender of the first term, if there be any interposing or intermediate term ; and yet, in that case, the lessee admits the lessor's power to make the lease presently, as much as in the other : then, if the union and accession of the two estates be the cause of the merger, the *quantum* of the thing granted will be the measure of that merger, and by consequence, the first lease here shall be extinguished but for a moiety of the lands. But *2dly*, it was argued, That it was not extinguished for any part ; for the term is saved within the letter, or at least within the equity of 27 H. 8. c. 10. for the intent of the saving therein was to preserve the balance between the *cestui que use* and his feoffees, according to the rule of equity by which they were governed before. Now suppose that *Fountain* had a lease for ninety-nine years before this statute, and that *Cook* had desired him to accept a feoffment to his use, without doubt, the Chancery would not have compelled him to assign till the ninety-nine years expired ; and the same right seems now to be preserved by the saving, and the words are general, *all that shall be seised to any use*, not all that shall be seised by feoffment or fine ; so that *the seisin to use* is the only thing the statute regarded, and *not by what sort of conveyance* : and lease and release are now a common conveyance ; and the lease being expressly said to be to enable him to accept a release to other uses, shall not be construed to any other intent, or to be to his own use, otherwise than to enable him to accept such release ; and then if it should be admitted that the lease for ninety-nine years were extinguished by the lease for a year, yet by the release it is revived ; for being but one conveyance, it is within the equity of the statute : and *Cro. Jac.* 643. is a stronger case and yet resolved there, that though the bargain and sale had destroyed the term for a time, yet by the recovery it was revived, because then but one conveyance *ab initio* ; so here. To all this it was replied, That the very reason of merger was the admittance
of

of the lessor's power to demise, and then the whole is surrendered, because he admits the lessor to have power to demise the whole, though he had but a moiety, to himself; and that where there is an intermediate estate, no merger shall be, does not make against it, for the intermediate estate disproves his admittance, that the lessor hath such power; but here is no such intermediate estate or impediment, and being joint-tenants *per my & per tout*, by the lease, the whole is merged by admittance of the lessor's power to demise the whole, though they agreed that a merger may be of one's part of an estate or term, and not for another's part. *Hale* cited a case, 6 Car. 1. *Hele Sevam*, where *A.* mortgaged lands to *B.* for years, *B.* re-demises to *A.* upon condition, if he does not pay such a sum, that he shall re-enter; and in the first conveyance were covenants for farther assurance by *A.* Then *B.* desires him to levy a fine, which *A.* does accordingly; and there it was agreed, that the term re-demised was extinguished: but if it had been expressed to what intent the fine was, it was agreed, there would have been no extinguishment of the term: and in this case, the lease is found to be *ed intentione* to enable him to take a re-lease. However, no judgment appears to be given; but it seems reasonable that the lease for ninety-nine years, in this case, should not be merged; or at least but for a moiety; and even in that case, equity would set up the moiety or the whole term again.

If tenant *pur auter vie* makes a lease for years, and dies, living *cestui que vie*, by this the lessee for years is become occupant, and then this accession of the freehold merges his estate for years, because they cannot consist together in one person: but if, in that case, the lessee for years had made a lease at will, and then the tenant *pur auter vie* had died, (which was the principal case) it was adjudged that the tenant at will was the occupant, and by consequence, the lease for years, which was in another person, not drowned or merged, there being no union of the term for years, and the freehold in one person; and then the lessee for years may, by determination of his will, enter and enjoy his term, and the occupant cannot prevent or hinder him, because he claims in *quasi* by the first lessor, who had made such lease for years, to which the estate for life, during the life of the *cestui que vie*, was subject and liable.

2 Bulf. 12.
Chamberlain v.
Ewer.

If tenant *pur auter vie* make a lease for years, to *A.*, remainder to *B.* for years, and *A.* enter, and then the tenant *pur auter vie* die, here *A.* the tenant for years, shall be occupant, by reason of the possession he had in him when the life fell; and yet his term for years is not drowned, by reason of the intermediate remainder to *B.* for years; for this estate by occupancy is in the nature of a reversion expectant upon both the terms for years, as it was in the tenant *pur auter vie* himself after these leases made. And, in some cases, a term for years and a freehold may consist together in one person; as if lessee for twenty years makes a lease to his lessor for five years, this term for five years is not drowned in the freehold or fee of the lessor, by reason of the intermediate reversion for fifteen years in the first lessee.

Bro. tit.
Surrender,
52.
2 Bulf. 12.
Bro. tit.
Leases, 63.

Cro. Jac.
619.
Salmon v.
Swann.

The case, in effect, was this; *A.* seized in fee, grants an *interesse termini* to *B.* for one hundred years, to begin at such a time, and before that time makes a lease for twenty-one years to *C.* to begin in possession presently; then *B.* before the commencement of his term, grants it to *A.*, who after grants a rent-charge, and the grantee of the rent-charge distrains *C.* for it; and the only question was, whether the *interesse termini* were drowned in the inheritance, or if it had any existence in *A.* so that he might thereout grant the rent? for then it would avoid the second lease for years, being before it, and, by consequence, be liable to the payment of the rent. It was resolved, that it was drowned in the inheritance; for, notwithstanding the second lease for years, the *interesse termini* is not so severed from the reversion, but that by grant thereof to him who hath the inheritance, such future term or interest is drowned, and shall never rise again; and, by consequence, this rent shall not charge the possession of the termor, who had the estate before the rent granted, and comes paramount it; for though there was a severance of possession by the second lease, yet the *interesse termini* being granted before that lease, and to continue for a longer time, that second lease was subject to be defeated by the *interesse termini* when it took effect; and therefore the *interesse termini* was *quasi* immediate to the freehold and inheritance, and therefore might drown in it.

Co. Lit. 339.
Plowd. 418.
Bracebridge
v. Cook.

My Lord Coke lays it down for a general rule, that one cannot have a term for years in his own right, and a freehold *in auter droit*, but that his own term shall drown in the freehold; and puts these cases: if a man, lessee for years, intermarries with the feme lessor, this shall merge and drown his own term for years; but if a feme lessee for years intermarries with the lessor, her term is not thereby drowned, because, says he, one may have a term for years *in auter droit*, and a freehold in his own right, as the husband in this case shall have: so, if lessee for years make the lessor his executor, the term is not thereby drowned, because the lessor hath a term *in auter droit*. So also, if a master of an hospital, being a sole corporation, by the consent of his brethren, makes a lease for years of the possession of the hospital, and afterwards the lessee for years is made master, the term is drowned *causa qua supra*; but if it had been a corporation aggregate, the making of the lessee master had not extinguished the term, no more than if the lessee had been made one of the brethren: but if a lessee for years of the glebe be made parson, the term is merged, by reason of the union of the term and freehold in him to his own right and use, though he has them in several capacities.

Plow. 419,
420.
3 Leon. 111.

Cro. Jac.
275.
Bulf. 118.
Plott v.
Sleep.

But this rule seems to admit of divers exceptions; for where the husband, possessed of a term for years, took wife, and after the inheritance descends or comes to the wife, the term for years or the husband is not thereby drowned or merged, because the descent was an act of law, which the husband could not prevent, and therefore shall not turn to his prejudice; but he shall have the inheritance in right of his wife, and the term for years in his own right, as he had before, and therefore may give away or dispose of the

the term as he thinks fit, notwithstanding such descent of the inheritance to his wife; and this was the opinion of *Fenner, Croke*, and *Fleming*, Chief Justice, and so given in direction to a jury in a trial at bar; and upon a general verdict to that purpose, they gave judgment accordingly. And *Croke* seemed to make a question, if the husband, in this case, had issue by his wife after the inheritance descended to her, so as thereby he was entitled to be tenant by the curtesy, and to have a freehold in his own right, if this should merge the term till the wife's death; and yet he said this was a much stronger case. But *Williams totis viribus* against the judgment, and held the term clearly extinct: but, notwithstanding judgment was given *ut supra*; and in this case all the court agreed, that if the lease had been made upon trust, for the advancement of such a woman, and the lessee had after intermarried with that woman, and then the inheritance had descended to her, that this would not merge the term, but that he might clearly dispose thereof to the purpose intended; because he had it *in autre droit*, and to another use. So, in another book it seems to be agreed, that if a man, being possessed of a term for years in right of his wife, purchases the inheritance, that by this the term for years, though in right of his wife, is merged and extinct, because the purchase was the express act of the husband, and therefore amounts in law to a disposition of the term, by reason of the merger consequent thereupon; but a bare intermarriage of the same termor with the reversioner will not work a merger of the term, because by the intermarriage the term is cast upon the husband by act of law, without any concurrence or immediate act done by him to obtain the same; and therefore, in such case, the law will preserve the term in the same plight as it gave it to the husband, till he by some express act destroys or gives it away.

Godb. 2.

But where the husband himself is lessee for life, and intermarries with the lessor, this merges his own term, because he thereby draws to himself the immediate reversion, in nature of a purchase by his own voluntary act, and so undermines his own term; whereas in the other case, the term being existing in the feme till the intermarriage, is not thereby so drawn out of her, or annexed to the freehold, as to merge therein; because that attraction, which is only by act of law consequent upon the marriage, would, by merging the term, do wrong to a feme covert, and so take the term out of her, though the husband did no express act to that purpose, which the law will not allow. But in such case, if the feme should survive, and have dower of those lands, this seems a merger of her term for a third part at least, because now she hath the term and freehold both in her own right, and then the accession of the freehold must *pro tanto* merge and drown the term.

Co. Lit. 318. b.
Plow. 418.
b.

So also, in case where the lessee for years makes the lessor executor, the term is not merged, because cast upon him without any act or concurrence of his, as a consequence of his being made executor; and therefore the act of law, which cast it upon him, shall preserve it in the same manner as if he had been a stranger, without any

Co. Lit. 318.
Plow. 418.
b. 420. a.
Freem. 289.
S. P.

any regard to the immediate freehold he had in his own right, which was only accidental.

Moore, pl.
157.

But if a feme executrix takes husband, and the husband after purchases the reversion, and dies, yet the feme surviving shall not have the term to any other purpose but as assets to pay debts; for as to any right of her own therein, the term is extinct by such purchase of the husband, because that was his own express voluntary act, and therefore amounts to a disposition of the term by the merger wrought thereupon; and so it was held by all the justices.

Bro. tit.
Leases, 63.
tit. Surrender, 52.
3 Leon. 111,
112. Plow.
419. b.
420. a.
Freem. 289.
S. P.

So, if one who hath a lease for years as executor purchase the inheritance, this merges the term, because the purchase was his own express act; nay, Baron *Clerk* held, that though the inheritance in such case had descended on the executor, that this likewise would merge the term, which how far it is law, may be a question; but as well in the case of the purchase, as of the descent, all agree that the term would not be extinct as to creditors, much less in case where the lessor is only made executor of the lessee for years; though *Plowden* seems to insinuate, that even in that case, the term is suspended during the life of the lessor; for he says, that after his death the term shall be revived.

3 Leon. 157,
158.
Bro. tit.
Leases, 58.

Land was given to the husband and wife, and to the heirs of the husband; the husband makes a lease for years, and dies, the wife enters and intermarries with the lessee; and it was holden that his term was not extinct, because the entry of the wife put a total interruption to the interest of the lessee, and avoided the term entirely as to herself, because she was in of the freehold by survivorship paramount the lease; and then the lease cannot take place again, till after her death, against the heirs of the husband, and whether she will outlive the term or not is uncertain; so that during her life, the lessee had no interest, but only a bare possibility, which cannot be touched or hurt by the intermarriage, but continues just as it was before.

Sanders v.
Bourneford,
Fin. Rep.
424.

[A lessee for 1000 years assigned the term to the lessor in trust for his wife and children, and the lessor accepted the trust, and declared the purposes of it. The Court of Chancery supported the trust, notwithstanding the merger of the term in the inheritance, and decreed the heir of the lessor to make a further assurance of the remainder of the term to a purchaser from the son of the lessee.

Donisthrope
v. Porter,
Ambl. 600.
(a) *Ibid.*
Chester v.
Willes,
id. 246.
(b) Though
the owner
were a lunatic,
yet as
between his
mere, absolute
real and
personal representa-

A court of law cannot merge estates unless it finds them in the same person, and acquired, subject to some exceptions, in the same right. But courts of equity look into the beneficial interests and views of parties, and do not regard whether the estates are strictly in the same person, or in different persons. Hence it is a general rule (a) with these courts, that where the owner of an estate becomes entitled to a charge upon it (b) secured by a term of years, such term shall sink for the benefit of the heir. But exceptions to this rule are admitted in several instances; as, where the person entitled to the charge takes only an estate tail (c) in the estate, and not the fee simple. So, where by reason of a limitation (d) to trustees to preserve contingent remainders, the owner does not take the

the fee. So, where the owner of the fee (e) has manifested his intention, that the charge should still subsist. So, in favour of creditors, (f) and of infants. The cases of infants turn upon a supposed intent; and the courts sink or preserve the term, as they find to be most beneficial for the interests of the infant.

tives, the term shall merge, for as between these no equity can exist. Lord

Compton v. Oxenden, 2 Vez. jun. 261. (c) Duke of Chandos v. Talbot, 2 P. Wms. 601. (d) Wyndham v. Earl of Egremont, Ambl. 753. (e) Powell v. Morgan, 2 Vern. 90. Thomas v. Kemish, 2 Vern. 354. 2 Freem. 207. (f) Ambl. 602. 2 Vez. jun. 264.

Analogous to the case of merger at law, where the term and the fee come into the same hands, is the doctrine of courts of equity, that, whenever a man is owner of the inheritance, and entitled to a trust term of the same estate, the term shall be attendant upon the inheritance.]

Best v. Stamford, Pr. Ch. 252. 1 Salk. 154. 2 Freem. 288.

(S) Of Surrenders of Leases for Years: And herein,

1. Of Surrenders in Fact or Expres: And herein again,

1. By what Words such Surrender may be made.

IT will not be here necessary to enter into a particular inquiry concerning the nature of a surrender, or of the several words whereby a surrender may be made, it being sufficient to say in general, that a surrender is a yielding up of an estate for life, or years, to him who hath the immediate estate in reversion or remainder, wherein the estate for life, or years, may drown by mutual agreement.

Co. Lit. 337. b. 2 Vent. 206. 3 Mod. 298. Perk. § 584.

So that any form of words, whereby such an intent and agreement of the parties may appear, will be sufficient to work a surrender; and the law will direct the operation and construction of the words accordingly, without the precise or formal mention of the word *surrender* in the conveyance. But then the party, who would have the benefit of such conveyance to work as a surrender, must plead it by the very words *fursum reddidit*, because these only can properly describe the operation of the conveyance as a surrender; and whoever would take advantage of a thing in pleading, must determine it to that particular species of operation whereof he would so have the advantage: therefore, if lessee for life or years, say to the lessor that his will is, that the lessor shall enter into his lands, and shall have the same, or is content that the lessor shall have again the land, and by virtue thereof the lessor enters into the land, this is a sufficient surrender: so, if the lessee say to him in the reversion or remainder, that he will occupy the lands no longer, or that I surrender to you such lands, &c. and he in the reversion or remainder thereupon enter into the land, these were sufficient and effectual surrenders at the common law: but if such words had been spoken privately by the lessee, or by a stranger, and not by way of address to him in reversion or remainder, this

Perk. § 607, 608. Cro. Eliz. 156. 488. Leon. 179. 280. 2 Leon. 50. Roll. Abr. 497. 2 Vent. 206. 3 Mod. 302.

could not amount to a surrender, because there could appear no mutual agreement of the parties for that purpose.

Dyer, 251.

Pl. 91. 93.

Cro. Elis.

2. Cro.

Jac. 169.

Lev. 144.

Keb. 807.

[But a re-

lease of the

lessee for

life or years

to the lessor

does not

amount to

a surrender,

for the words

are repug-

nant; for

the lessee is

in possession,

and the re-

lease sup-

poses the

lessor in possession.

Jenk. 195. Ca. 2.]

3 Mod. 301. 2 Vent. 206. Show. Par. Ca. 150. 3 Lev. 284.

Thompson v. Leach.

So, if lessee for years remise, release, discharge, and for ever quit-claim to his lessor all his right, title and estate in or to such lands; this has been held to amount to a surrender, because a lease for years consisting only in contract, these words are sufficient to dissolve that contract, and let in the reversioner. But such words, in case of a lease for life, would not amount to a surrender, because that being an estate created by livery, must be defeated by act of equal notoriety, or express words of conveyance of the freehold, which the before-mentioned words are not, but rather applicable to a thing which lies only in grant. But of that *quære*; for it hath been adjudged, that if tenant for life grant, surrender and release to him in the reversion, that this was sufficient, and so would have been, though there had not been the word *surrender*, because the word *grant* would operate as a surrender after the conveyance executed; and that such surrender, though without notice or express agreement of the surrenderee, would be good till actual disagreement thereto.

Smith v.

Mapple-

back,

1 Term

Rep. 441.

[So, where a lease came into the hands of the original lessor, by an agreement entered into between him and the assignee of the lessee, "that the lessor should have the premises as mentioned in the lease, and should pay a particular sum over and above the rent annually towards the good-will already paid by such assignee," it was adjudged, that this agreement operated as a surrender of the whole term.]

[*(a)* This

note in writ-

ing, it hath

been adjudg-

ed, need not

be stamped:

Farmer v.

Rogers,

2 Will. 26.

Beck v.

Phillips,

5 Burr. 2827.

But now by the statute of frauds and perjuries it is provided, that no leases, estates or interests, either of freehold or terms for years, shall be surrendered, unless it be by deed, or note in writing (*a*), signed by the party who makes such surrender, or some other lawfully authorised thereunto, or by an act and operation of law: so that surrenders in law, or implied surrenders, remain as they did at common law, if the lease, which is to draw on such surrender, be in writing pursuant to that statute.

However, a stamp seems now to be rendered necessary by stat. 23 Geo. 3. c. 58.]

Magennis v.

Mac-Cul-

logh, Gilb.

Eq. Rep.

236.

[Since this statute, saith our author in another place, a lease for years cannot be surrendered by cancelling the indenture, without writing, because the intent of the statute was, to take away the manner they formerly had of transferring interests in lands by signs, symbols, and words only; and therefore, as a livery and seisin on a parol feoffment was a sign of passing the freehold before the statute, but is now taken away by the statute, so, he takes it, the cancelling of a lease was the sign of a surrender before the statute, but is now taken away, unless there be a writing under the hand of the party; and the words, viz. by *act and operation of law*, are to be construed a surrender in law, by the taking of a new lease, which,

which, being in writing, is of equal notoriety with a surrender in writing.

Although the statute directs that the deed or note in writing shall be signed by the surrenderor, yet where an agreement was entered into between the lessor and lessee, at the instance of the former, for the surrender of a lease, an assignment actually prepared, the key delivered up and accepted, and a long acquiescence on the part of the lessor, without any claim or demand upon the lessee, it was decreed in equity that the lessee should be discharged of the rent from the time he had delivered up the key.]

Natcholt
v. Porter,
2 Vern. 112.

2. Upon what Estate such Surrender may operate.

It appears by the definition before given of a surrender, that the same is a yielding up of an estate for life, or years, to him in the immediate reversion or remainder: but here a question may arise, what estate in the reversion or remainder will be susceptible of such surrender; for if the estate in reversion or remainder be but for years, it seems a great doubt in the books, whether a lease for years in possession may be surrendered, so as to merge and drown therein; and it is commonly said, that years cannot drown in years; therefore, where lessee for twenty years made a lease for ten years, and the lessee for ten years surrendered to his lessor, this has been held to be no surrender, so as to merge the ten years in possession, but only to transfer them by way of assignment or accession to the number of years then left in the lessor; for that years could not drown in years. But the contrary to this has been held with some clearness, and it seems to be now settled, that such surrender is good, and shall merge the first term; wherein it was agreed, 1. That if the term in reversion were greater than the term in possession, that the greater would merge the less, as ten years may be surrendered and merge in twelve or fourteen years. 2. It was held by *Garady*, *Fenner*, and *Popham*, that though the reversion were for a less number of years, yet the surrender would be good, and the first term drowned; as if one were lessee for twenty years, and the reversion expectant thereupon were granted to one for a year, who granted it over to the lessee for twenty years, that this would work a surrender of the twenty years term, as if he had taken a new lease for a year of his lessor; for the reversionary interest, coming to the possession drowns it, and the number of years is not material; for as he may surrender to him who hath the reversion in fee, so he may to him who hath the reversion for any less term: and therefore *Popham* held, that where lessee for twenty years makes a lease for ten years, and the lessee for ten years surrenders to his lessor, viz. the lessee for twenty years, that this is good, and the lessor shall have so many of the years as were then to come of his former term of twenty years, that is, as it seems, so many years as were to come of his reversion shall now be changed into possession: and he held further, that if such lessee for twenty years had made such lease for ten years, and then granted over the reversion

Cro. Eliz.
173.
Leon. 303.
Owen, 97.
Perry v.
Allen,
Leon, 323.

Foph. 30.
Co. Lit.
218. b.
Cro. Eliz.
302.
2 Vent. 316.

Leases and Terms for Years.

for ten years only, viz. no longer than the lease for ten years was to continue, and such lessee for ten years had attorned, then the grantee of the reversion should have the rent and services, and the grantor the residue of the twenty years; and that the lessee for ten years might surrender to the grantee of the reversion for ten years, and he thereby would have in possession so many years, as were then to come of his reversion; and if he had a less term in the reversion than the lessee himself had in the possession, it should go to the benefit of the first termor for twenty years, who was his grantor; for the term in possession is quite gone and drowned in the reversion, to the benefit of those who have the reversion thereupon, having regard to their estate in the reversion, and not otherwise: to all which *Fenner* agreed; and it appears by the case of *Cook and Fountain supra*, to be taken for clear law, that a lease for ninety-nine years might be drowned by his acceptance of a lease from the reversioner even for one year.

Co. Lit.
173. b.

But now, whether a lease for years in possession may be surrendered, so as to be merged in a lease in remainder, be the term in remainder greater or less than the term in possession, seems to be no where settled: indeed my Lord *Coke* says, that if there be a lease to *A.* for twenty years, remainder to *B.* for ten years, and *B.* release all his right to *A.*, that here *A.* hath an estate for thirty years, for one chattel cannot drown in another, and years cannot be consumed in years; but whether if *A.* had granted and surrendered his estate and term to *B.*, it would have been merged, does not appear; and *Perkins* holds, that if a lease for life be of lands, the remainder to a stranger for years, and the lessee for life surrender his estate to him in the remainder for years, it cannot take effect as a surrender, because an estate for life cannot drown in an estate for years; which reason seems to prove, that an estate for life cannot be surrendered to or merge in a reversion, if it be only for years: *ideo quare*.

Perk. § 589.

3. Of Surrenders in Law, or implied Surrenders: And herein,

1. With regard to Leases in Possession.

Bro. tit.
Leases, 14.
Dyer, 93.
pl. 28.
Perk. § 617.
3 Leon. 244.
5 Co. 11.
Cro. Eliz.
521. 605.
2 Roll.
Abr. 495.

As to the surrender in law of leases in possession, this is wrought by acceptance of a new lease from the reversioner, either to begin presently, or at any distance of time, during the continuance of the first lease; and the reason such acceptance of a new lease amounts to a determination and surrender of the first is, because otherwise the lessee would not have the full advantage he hath contracted for by acceptance of the second lease, if the first should stand in the way, and consume any of those years comprised in the second lease; for which reason, and to enable the lessor to perfect and make good his second contract, the lessee must be supposed to waive and relinquish all benefit of the first: therefore, if lessee for thirty years takes a new lease, though but for three years, and to begin ten years hence, yet this is presently a surrender and a determination

termination of the whole first term of thirty years, because thereby he admits the lessor's power to make such lease, which, if the first should stand in the way, would be void, because the lessee had the lands already for a term of a much larger duration; and though such second lease be made to him *in futuro*, and at common law, though it were even by parol, yet it would be a present surrender of the first lease, because the admittance of the lessor's power to make such a lease, which is the cause of the surrender, is then at the time of the contract made for such second lease, and therefore the operation of it, to cause a surrender of the first, must be then presently too, or not at all; and it cannot be a surrender of the last twenty years, and remain good for the first ten years, because that would make a fraction and severance of the lease, which at first was entire, and passed by one entire contract, and therefore cannot either by any surrender in law, or even by any express surrender, be curtailed and divided; the consequence of which is, that such acceptance of a new lease being a present surrender of the first, the lessor may enter and take the profits for the whole thirty years, saving only the three years comprised in the second lease. Another reason perhaps of such surrender may be, because the lessor, having already made a lease for thirty years, cannot, during the continuance of that term, make any other lease to transfer the possession; but yet having the reversion expectant upon that term, he may transfer that for any less term, or to begin at any distance he thinks fit; and then if the second lease be by deed, it may as well be supposed to carry the reversion, the union whereof, with the possession, though for never so short a time, will, as has already appeared, merge the possession; and though the second lease, which may be supposed to carry the reversionary interest, is not to commence till ten years hence, yet the first lessee has the interest and right thereof in him immediately, and then possession and reversion being inconsistent in one person at one and the same time, the one must merge and drown the other.

A husband, seised of lands, made a lease for ninety years by indenture, and after enfeoffed certain persons, and took an estate to him and his wife in tail, and after the termor took a new lease by parol of the husband for eighteen years only, to begin presently; then the husband died, and his wife evicted the termor; and it was held she lawfully might, for the first lease was surrendered and drowned in law by the acceptance of the second, and then the wife's estate, by survivorship, came in paramount the second lease; and though the second lease, which was the cause of the surrender of the first, was voidable by the wife after her husband's death, yet the surrender of the first, wrought by the acceptance thereof, was absolute and present.

One let lands to *A.* for life and twenty years over, and after let the same lands to *B.* for forty years, to commence after the death of *A.* and the end of the said twenty years; then *B.* intermarries with *A.*, and *A.* dies, and *B.* the husband hath the term for twenty years, yet his term of forty years is not surrendered by it,

Dyer, 140.
2 Roll.
Abr. 495.

Bendl. pl.
59.
And. 32.

because that was not begun, but was a future *interesse termini*, to begin wholly after the first lease ended; so there was no union at all of the terms.

3 Bolf. 203-
4. Roll.
Rep. 387.
2 Roll. Abr.
497, 498.
2 Mod. 176.

If lessee for years makes a lease to his lessor for all but a day, this is clearly no surrender of his lease, because the day disjoins the union and prevents the merger, which would have followed if the lease had been for the whole term; for then the lessor would have had the whole estate entire in him, as he had before he made the lease, and consequently the lease would be merged and drowned in the reversion.

4 Leon. 30.

Lessee for twenty-one years took a lease of the same lands for forty years, to begin immediately after the death of J. S.: it was held in this case, that this was not any present surrender of the first term, because J. S. might wholly outlive that term, and then there would be no union to work a surrender; and it being in *equilibrio* in the mean time, whether he will survive it or not, the first term shall not be hurt till that contingency happens, for if J. S. die within the first term, then what remains of it is surrendered and gone by the taking place of the second.

Moor, 94.
139. L. d.
Treasurer
and Barton.

A man makes a lease for one hundred years, the lessee makes a lease for twenty years, rendering rent, with clause of re-entry, and after grants his reversion to the first lessor: he shall neither have the rent nor re-entry, because the reversion, to which it was annexed, is extinct and gone by way of surrender: otherwise it would be, if one make a lease for years, rendering rent, and after grant the reversion for life, or years, to which an attornment is had, and after such grantee surrender; yet the grantor shall have again the rent, because it was once a rent incident to the reversion, which by the surrender is restored whole again as it was before.

Plow. 107.
Co. Lit.
218. b.

If one makes a lease for forty years, and the lessee takes a new lease for twenty years, upon condition, that if he does not do such an act, that the lease shall be void; and after he breaks the condition, whereby the lease is avoided, yet the surrender of the first continues, for that was absolute by acceptance of the second, and the condition was only annexed to the second lease. So, if the lessor had granted the reversion to the lessee upon condition, and after the condition were broken; yet the surrender of the term would continue, because the condition was annexed only to the grant of the reversion, and moved from the lessor as his terms of the lessee's enjoyment of such grant; but the surrender, which is wrought by acceptance of such grant, and moves from the lessee himself, was absolute; and the diversity is, when the lessor grants the reversion to the lessee upon condition, and when the lessee grants or surrenders his estate to the lessor upon condition; for a condition annexed to a surrender may revert the particular estate, because the surrender itself is conditional.

Dyer, 140.
Pl. 43.
2 Roll.
Abr. 495.

So, if such second lease were by baron seized in right of his wife, and after the baron died, and the feme avoided the second lease, yet the surrender of the first, by acceptance thereof, is absolute.

Lessee

Lessee for life made a lease for years, rendering rent, and after surrenders to the lessor upon condition, then the lessee for years takes a new lease for years of the lessor, and after the lessee for life performs the condition, and evicts the lessee for years, who re-enters, and the lessee for life brings debt for the first rent reserved; and it was ruled, that it was not maintainable, for the lease out of which it was reserved is determined and gone; for though the surrender of the tenant for life, which made the lessee for years immediate tenant to the first lessor, and so enabled him to make such surrender, was conditional, yet the defeating of the estate for life, by performance of the condition, cannot defeat the estate of the lessee for years, which was absolute, and well made, and then the rent reserved thereon is gone likewise.

Cro. Eliz.
264.
Brewster and
Sir Thomas
Parrot.

If one be lessee for life or years, and take a new lease of the same lands, though such second lease be void for any defect in the making or execution of it, as if it were for life, to begin at a future day, &c. yet it is a surrender of the first lease; for the acceptance of the indenture in the contracting and agreement to have a new lease, makes a surrender of the first lease before the livery is made; and therefore though that be void, yet it cannot set up the first lease again, which was before surrendered: and such contract for a new lease is a good evidence to a jury of a surrender.

Cro. Eliz.
873.
Moor, 636.
Keb. 285.

But if such second lease were void for want of power in the lessor to make it, then, notwithstanding such admittance of the lessee, the first lease would not be surrendered: therefore, where one made a lease for forty-one years by indenture 14 Nov. 1616, to A., to commence from the *Annunciation* which should be anno 1619, and after, the same year, by another indenture bearing date 3 Dec. made a lease to B. for ninety-nine years, to commence from the *Annunciation* then last past, by virtue whereof B. entered and was possessed, and then the lessor by another indenture 16 Nov. 1617, made another lease of the same lands to A., to commence from 17 Nov. 1619, for forty-one years, who accepted thereof, and after the commencement of his term A. entered and was possessed, and made his will, and his executors let to the plaintiff, &c. and the only question was, if the acceptance of the second lease by A. had determined, discharged or extinguished the first lease, so as to let in the intermediate lease to B.? It was adjudged, that it had not, because by the lease to B. for ninety-nine years, and his entry, the lessor had but a reversion, and could not by his contract after with A. give any interest to A.; and the first lease to A. was good as a future *interesse termini*, to take effect in possession when the time came, and thereby *pro tanto* to defeat the lease for ninety-nine years to B.; and if it had not been for the lease to B., there had been no question but that the first lease to A. had been by such acceptance of the second lease surrendered and gone; but that intermediate lease, being for so great a number of years, disables him, during that time, to contract for any less number of years, as the lease for forty-one years was.

Hutton, 104.
Watt and
Maidwell.
[No sur-
render, ex-
press or im-
plied, in or-
der to, or in
considera-
tion of, a
new lease,
will bind,
if the new
lease is ab-
solutely
void; for
the cause,
ground, and
condition
of the sur-
render fails.
Per Lord
Mansfield,
Zouch v.
Parsons,
3 Burr.
1807. Lloyd
v Gregory,
Sir W. Jon.
405-6.
Wilson v.
Sewell,
4 Burr.
1980.
Davison v.
Stanley,
Id. 2210.]

Perk. §604. If *A.* lets to *B.* for ten years, who lets to *C.* for five years, *C.* cannot surrender to *A.* by reason of the intermediate interest of *B.*, but in such case *B.* may surrender to *A.*, and afterwards *C.* may surrender likewise, because then his lease for five years is become immediate to the reversion of *A.*

2. *With regard to Leases in Futuro.*

Co. Lit. 338.
5 Co. 11.
10 Co. 53.
Cro. Eliz.
522. 605.
Poph. 9.
2 Roll.
Abr. 496.

Surrenders in law of leases *in futuro*, or future interests—and these can no ways be surrendered, for an express surrender of such future lease or interest is not good, (except as after mentioned); therefore, if one makes a lease for years, to begin at *Michaelmas* next, this future interest cannot by any express surrender be merged, because there is no reversion wherein it may drown; for till the entry the lessee hath no possession, and, by consequence, there can be no reversion wherein that possession may drown: but yet if such lessee before *Michaelmas* take a new lease for years, either to begin presently, or at *Michaelmas*, this is a surrender in law of the first lease presently; because thereby he presently admits the lessor's power to make such lease, which, if the first lease should stand, he could not do; and since such lessee hath contracted for a new interest, inconsistent with the first, his acceptance of such new interest waives and dissolves the first, because the contract whereby it was made, was entire, and therefore the whole first lease is surrendered presently.

2 Roll. Abr.
494. 495.
a lease in
futuro.

Lessee for years, to begin presently, cannot till entry or waiver of the possession by the lessor merge or drown the same by any express surrender, because till entry there is no reversion wherein the possession may drown: but if the lessee had entered, and assigned his estate to another, such assignee before entry might have surrendered his estate to the lessor, because by the entry of the lessee the possession was severed and divided from the reversion, which possession, being by the assignment transferred to the assignee, may without any other entry be surrendered, and drown in the reversion.

3. *With regard to the Thing itself so surrendered.*

Cro. Eliz.
373.
Moor. 636.
Cro. Jac.
84. 177.
2 Roll.
Abr. 496.

As to the nature of the thing surrendered, herein we must observe, that the acceptance of a new lease, which will work a surrender of the first, ought to be of something of the same nature and kind with the first; otherwise there can be no surrender of the first, because there is no inconsistency but that both may stand together; therefore if lessee for years accepts a grant of a rent, common, estovers, herbage, or the like, for life or years, out of the same lands, or if such lessee for years accepts of a lease of the same lands at will only, all these amount to a surrender and determination of the first lease, because they admit the lessor's power to deal or contract for the lands, or a certain charge out of it, which being inconsistent with the interest of the lessee under the first lease, dissolve and destroy it.

So,

So, where lessee for sixty years of an advowson did, after the church became void, take a presentation to himself of the lessor, and was admitted, instituted, and inducted, this was adjudged to be a surrender of his lease; for by the acceptance of the parsonage he thereby gains a new interest for life in that which was the chief fruit of his lease, and, consequently, such interest, being inconsistent with his interest under the first lease, amounts to a determination and surrender thereof.

But if lessee for years of a park accepts a grant of the office of park-keeper of the same park for life or years, this is said to have been adjudged no surrender of the lease for years, because such office is collateral to the land, and not any ways issuing out of it; and yet *Coke* and *Dodderidge* thought, that whether he had the office of park-keeper first, or the lease for years of the park itself first, that the accession of the other to it would merge and drown the first, for the inconsistency that a man should be park-keeper to himself; *ideo quære*.

So, where one made a lease for ninety-nine years of a manor, and after made the lessee bailiff of the same manor for twenty-one years, this was adjudged to be no surrender of his first lease: 1. Because the bailiff, as such, had no interest in the lands, but an authority only. 2. Because the bailiwick was no part of the thing demised, but of another nature; for the bailiff, as such, is a mere servant, and all he doth is for the benefit, and in the name of his master. So, if such lessee of a manor were made surveyor or steward for life, this would not determine his lease; because in these capacities he is only a servant, and acts in the name of his master, and therefore no inconsistency therein with his having a lease of the manor.

But where lessee for years of a house or castle accepted a grant of the custody thereof for life or years, this was adjudged a surrender thereof; because the custody is of the same thing which was leased, and a man cannot be keeper to himself.

If lessee for years of lands accepts a new lease by indenture of part of the same lands, this is a surrender for that part only, and not for the whole, because there is no inconsistency between the two leases for any more than that part only which is so doubly leased; and though a contract for years cannot be so divided or severed, as to be avoided for part of the years, and to subsist for the residue, either by act of the party, or act in law, yet the land itself may be divided or severed, and he may surrender one or two acres, either expressly or by act in law, and yet the lease for the residue stand good and untouched, because here the contract for the residue remains entire, whereas, in the other case, the contract for the whole would be divided, which the law will not allow.

Hutt. 105.
Cro. Jac. 84.

Cro. Jac.
177.
2 Roll.
Abr. 496.
Roll. Rep.
83. Godb.
419. 425.
2 Roll. Rep.
357. 361.

Cro. Jac.
84. 177.
Noy. 12.
2 Roll.
Abr. 495.

Dyer, 200.
pl. 62.
Cro. Jac.
177.
2 Roll.
Rep. 357.
2 Roll.
Abr. 498.
Fifth v.
Campion.

(T) Leases, when determined by cancelling the Deed.

Bro. tit.
Leases, 6.
16. Cro.
Car. 399.
Jon. 355.
Moore, 35.
pl. 216.

AS to leases for years, owing their existence to the deed or indenture whereby they are created, so that the cancelling or destruction thereof shall destroy and avoid the lease, a diversity seems to be taken in the books between such things as lie in livery, and may be executed by actual entry, and such things as lie only in grant, whereof no actual or manual occupation can be had; therefore, if one had made a lease for years, at common law, of lands or houses by deed or indenture, and tear, rase, or cancel it, yet this would not destroy the continuance of the lease itself, because such lease of lands or houses lying in manurance and actual occupation might at first have been made by parol only, without any deed or indenture: and therefore such deed or indenture being not of the essence of the lease, the destruction or cancelling thereof shall not defeat or destroy the lease or interest of the lessee, because his actual entry into the land, and continuance of the visible possession and occupation thereof, gives sufficient sanction and notoriety to the contract, as to the interest of the lessee in the lands and houses themselves; though thereby the deed itself, and all covenants, which had their existence only by the deed, are defeated and avoided. But if the king made a lease of such lands or houses by letters patent, which are matter of record, if the letters patent and enrolment are destroyed or cancelled, the lease itself falls to the ground, because these letters patent and enrolment, which were of the essence of the creation and continuance of the lease, are destroyed and lost. So, if a common person had made a lease for years, or a grant for years, of tithe, common, advowsons, or other things which lay merely in grant, in such cases the cancelling or destruction of the deed, whereby they were created and subsisted, must necessarily destroy the interest of the grantee likewise, because such deed was of the very essence of the deed or grant, without which it could not have been made at first, nor can subsist afterwards, such deed being the only evidence of the contract, which could not be executed by any actual possession or manual occupation. But now, since the statute of frauds and perjuries, which makes all leases for above three years to have only the force and effect of leases at will, unless they be in writing, and signed by the party, &c. the deed or writing whereby such lease is made seems to be of the same essence as the lease itself; and therefore the cancelling or destruction of that seems to destroy and avoid the lease itself, because it destroys all evidence allowed by law for the support thereof; though in such case, Chancery frequently sets up the lease again, or decrees the party to execute a new one for the residue of the term, which is not against the prohibition of the act, because there was once a good and effectual lease made pursuant to the statute.

And though that statute excepts leases not exceeding the term of three years, yet not absolutely even those; for it goes on, "not exceeding the term of three years from the making thereof," whereupon the rent reserved to the landlord during such term shall amount unto two third parts at least of the full improved value of the thing demised, and that no leases, estates, or interests, either of freehold or terms for years, or any uncertain interest, not being copyhold or customary interest of, in, to, or out of any messuages, manors, lands, &c. shall be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law."

29 Car. 2. c. 3.
A lease for three years to commence in futuro, by parol is void by this statute.
12 Mod. 620. Lord Raym. 736.
[But a lease by parol for less than three years to com-

mence in futuro, is good. Ryley v. Hicks, 1 Str. 652. Bull. N. P. 177. S. C.]

[(T. 2) When forfeited.

HERE it is to be observed, that any act of the lessee by which he disaffirms or impugns the title of his lessor, occasions a forfeiture of his lease. For to every lease the law tacitly annexeth a condition, that if the lessee do any thing that may affect the interest of his lessor, the lease shall be void, and the lessor may re-enter. Besides, every such act necessarily determines the relation of landlord and tenant; since to claim under another, and at the same time to controvert his title; to affect to hold under a lease, and at the same time to destroy that interest out of which the lease ariseth, would be the most palpable inconsistency.

A lessee may thus incur a forfeiture of his estate by act *in pais*, or by matter of record. By matter of record—where he sues out a writ, or resorts to a remedy, which claims or supposeth a right to the freehold; or where in an action by his lessor grounded upon the lease he resists the demand under the grant of a higher interest in the land; or where he acknowledges the fee to be in a stranger: for having thus solemnly protested against the right of his lessor, he is estopped by the record from claiming an interest under him. By act *in pais*, as where he alienates the estate in fee (a). But then this alienation must be by such mode of conveyance as displaces or divests the estate of the reversioner (b): for if it have not this effect, the law will not adjudge it a forfeiture. It must be, therefore, by feoffment with livery; for this only operates upon the possession, and effects a disseisin. It cannot be by a grant, or any conveyance in the nature of a grant, such as lease and release, bargain and sale, &c. conveyances of this kind operating only on the grantor's interest, and passing only what he may lawfully depart with. And as it cannot be by grant, of course no forfeiture can by this way be incurred of an estate of those things which lie merely in grant.

being in the king, make a feoffment in fee, this is a forfeiture; and yet no reversion or remainder is divested out of the king; and the reason is, in respect of the solemnity of the feoffment by livery, tending to the king's disseisin. Co. Lit. 251. b.

Co. Lit. 251. a.
Hawk. Abr. Co. Lit. 339.
Dixey v. Spencer,
3 Leach. 220.
Moor, 211.
Goulds. 40.
S. C. Godb. 105. seems to be S. C.
Barkhouse's case, 4 Leach. 3 Dy. 209. pl. 21. in marg.
2 Lev. 52.
(a) Co. Lit. 251. b.
1 Burr. 92.
Co. Lit. 251.
(b) But if tenant for years, the reversion, or remainder.

And

Eastcourt v.
Weeks,
1 Salk. 187.

And if an attempt to alienate by those modes of conveyance which affect, but are not operative enough, to pass a fee, occasion no forfeiture, a lease by the tenant for a greater number of years than he has in the land must be still more venial; because it is only a contract between him and his under-lessee, which cannot possibly prejudice the interest of the original lessor, and does not even pretend to usurp or touch the freehold and inheritance.

(a) 10 Co.
129. a.
Plow. 70.
2. b.
(b) Cro.
Eliz.
Dy. 45. b.
4 Leon. 5.
3 Leon. 67.
Styl. 483.
3 Will. 234.
2 Bl. Rep.
767. S. C.
Doe v.
Skeggs,
Tr. 21 G. 3.
B. R. cited
in 2 Term
Rep. 428.
(c) Cruise
v. Bur. 10.
3 Will. 234.
2 Bl. 1.
767. S. C.
But where
the words of
a proviso
were, that
the lessee,
“his execu-
tors or ad-
ministrators,
shall
“not let, let, or assign over the said hereby demised messuage or dwelling-house, or any part thereof,”
an under-lease by the lessor’s administratrix was holden to be within the meaning of the proviso. Roe
v. Harrison, 2 Term Rep. 425.

Forfeitures are also incurred by the breach of *express* or *conventional* conditions. For the lessor, having the *jus disponendi*, may annex whatever conditions he pleases to his grant, provided they be not illegal, or repugnant to the grant itself, and upon the breach of these conditions may avoid the lease. A condition, that if the rent be behind by the space of any given time after the day prescribed for payment, the lessor shall re-enter, is good; and such condition is not saved by the attendance of the lessee with the rent merely on the first day of payment; for, if the lessor be not then there to receive it, the lessee must equally attend on the last day (a). Conditions in restraint of alienation are legal and usual; but whether such conditions extend to assignees in law, is a point which doth not yet seem to be settled (b). But the courts have always held a strict hand over these conditions for defeating leases, and have countenanced very easy modes for putting an end to them. Where, therefore, the words of the condition were (c), that the lessee, “his executors or administrators, shall not, at any time or times, “during this demise, assign, transfer, or set over, or otherwise do “or put away this present indenture of demise, or the promises “hereby demised, or any part thereof,” the court held, that this condition was not broken by an under-lease; for that *assign, transfer, and set over* are mere words of assignment; that *otherwise do or put away* signify any other mode of getting rid of the premises entirely; and cannot extend to the making of an under-lease.

3 Co. 65.
2. b.
2 Term
Rep. 431.
Co. Lit.
215. a.
Plowd. 131.
3 Co. 64. b.
Cro. Eliz.
220.
(d) In such
case, it
should seem,
the forfeit-
ure may be
taken ad-

And as the courts adhere strictly to the precise words of the condition in order to prevent a forfeiture, so, where a forfeiture hath manifestly been committed, they will not allow the lessor to take advantage of it, if they find that he has afterwards done any act which amounts to a waiver of it. Acceptance of rent hath been adjudged to be an act of this kind; but then, in order to give it this effect, it must appear, that at the time the lessor received the rent he had notice of the forfeiture: for it would be absurd, and a most unwarrantable conclusion, to infer from the mere receipt of the rent that he meant to remit a forfeiture he had never heard of. However, when we say that a forfeiture may be waived, we must be understood to confine ourselves to those cases, where by the terms of the contract, the estate, upon the tenant’s doing or failing to do what he has stipulated to do or abstain from, is only determinable, not where it absolutely determines; where the lease is only voidable, not where it is merely void (d). In the one case, the

the forfeiture is incomplete, some act of the lessor is necessary to perfect it; that is, to speak more correctly, no forfeiture is actually incurred in the instant, only a right of avoiding the lease accrues to the lessor, which right he may waive as he may any other right that is merely personal and conventional. In the other case, the contract is at an end, the lease is determined; it is a nullity; the lessee has no interest upon which the will of the lessor can attach.

By stat. 4 G. 2. c. 28. § 2. every landlord, who hath by his lease a right of re-entry, in case of non-payment of rent, when half a year's rent is due, and no sufficient distress is to be had, may, without any previous demand of the rent, or re-entry, serve a declaration in ejectment for the recovery of the demised premises; and a recovery in such ejectment shall be final and conclusive, both in law and equity, unless the rent and all costs be paid or tendered within six calendar months afterwards. But, if the tenant, at any time before the trial in ejectment, pay or tender to the landlord the whole rent in arrear, with the costs, or pay such arrears and costs into court, the proceedings in ejectment shall cease, and the tenant shall be relieved in equity, and hold the lands demised according to the old lease without any new lease.

proceeding at law, in cases for forfeiture of non-payment of rent, by compelling him to take the money really due to him. See Bull. N. P. 97. and 2 Str. 900. *acc.*

vantage of even by a wrong-doer. But see *Kinnerley v. Orpe*, Dougl. 56. *contr.*

In *Archer v. Snapp*, Andr. 341. Lord C. J. Lee observes, that both the courts of law and the courts of equity had, before this, statute, exercised a discretionary power of staying the lessor from

(U) Of the Renewal of Leases, by whom, and for whose Benefit.

A Lease, we must have observed, is a contract, by which, in consideration of some pecuniary or other recompence, the temporary possession of lands or tenements is granted to another; for if the grantor parts with his whole interest in the estate, the contract is not a contract of lease but of sale; it being essential to a contract of lease that a reversion should be left in the grantor. But a practice has prevailed, particularly in leases from the crown, from the church, and from other corporations, of granting a further term to the old tenants, in preference to strangers; and as this expectation of renewal is rarely disappointed, such tenants are considered as having an ulterior interest beyond their subsisting term. This interest is generally, but improperly, called their *tenant right of renewal*. For it has happened in this case, as it has happened in many others, that long indulgence has been made a ground of claim; a preference repeatedly given, has, in process of time, been insisted upon as a prescriptive privilege; and attempts have been made to enforce that as a right, which was, in truth, a pure voluntary courtesy. But though such attempts have failed of success, there being, as between landlord and tenant, abstractedly from any express contract to that effect, no obligation upon the former to renew with the latter, yet the almost invariable recurrency of the grant to the same objects, has begotten an idea of something like property, and men have been so far from

See the very learned and ingenious argument for the appellant in the case of *Lee v. Vernon*, 7 Br. P. C. 438. and see also Mr. Butler's note in his edition of Co. Litt. 293. b.

treating this ulterior interest as precarious, that they have acted upon it, as if it were fixed and certain. Hence, leases of this sort are become a fund for settlements of every kind, for mortgages and other securities; and are subjected to the same limitations, and applied to the same provisions with the most permanent interests.

2 Atk. 597.
2 Br. Ch.
Rep. 248.

This tenant-right, as it is called, is recognized and protected by courts of equity in many instances. Hence, where a trustee, executor, or guardian, avails himself of his situation, and gets a renewal of a lease for his own benefit, the courts will direct it to be for the use of the *cestuy que trusts*, or persons beneficially interested in the old lease. So, where a person who has only a partial interest, as tenant for life, mortgagee, or mortgagor, from the circumstance of being in possession, takes the opportunity of renewing, such renewal shall be for the benefit of the person entitled to the reversion. And according to the broad principles of equity, it should seem, that wherever a grant of a reversionary term is obtained, to the prejudice of the old tenant, by undue means, whether by *suggestio falsi*, or *suppressio veri*, the party so obtaining it, though an entire stranger, shall not be permitted to hold it to his own use.

Keech v.
Sandford,
or Rumford
Marketcase,
2 Eq. Ca.
Abr. 741.
Sel. Ca. in
Chan. 61.
S. C.

A lease of the profits of a market was devised to a trustee, in trust for an infant: before the expiration of the term, the trustee applied to the lessor for a renewal for the infant's benefit, which he refused, in regard that it being only the profits of a market, there could be no distress, and it must rest solely on covenant, which the infant could not bind himself in; on which the trustee got a lease to himself. It was decreed by Lord Chancellour King, that the lease should be assigned to the infant; that the trustee should be indemnified from the covenants of the lease, and should account for the profits since the renewal. His lordship said, he must consider this as a trust for the infant; for if a trustee, on refusal to renew, might have a lease to himself, few trust-estates would be renewed to *cestuy que trust*: that the trustee should rather have let it run out, than to have had the lease to himself: that it may seem hard, that the trustee is the only person of all mankind who may not have the lease; but it is very proper that the rule should be strictly pursued, and not in the least relaxed; for it is very obvious what would be the consequence of letting trustees have the lease, on refusing to renew to *cestuy que trust*.

Anon.
2 Ch. Caf.
207.

A lessee for years, subject to a trust, devised *residuum bonorum*: the estate, if all sold, would but pay the debts: the executor paid the debts, and renewed the lease for a further term, it being a church lease, and offered to account, if any profits would arise out of the old term. It was insisted, that by paying debts to the value, the property was altered, and vested in him in his own right. But Lord Keeper decreed the executor to account for the new as well as the old lease; and asked, if the executor acquainted the church with his case, and declared that he would renew and take it for the time of the old term, to the benefit of the creditors and

and executorship, and the rest for himself? By the *French law*, his lordship said, no churchman can make a lease to any but the old tenant, unless it first be refused by the old tenant.

An executor in trust for an infant of a lease for 99 years, determinable on lives, renewed the estate for lives absolutely. It was holden that the renewed lease, though for lives only, should follow the nature of the original lease, and go to the personal representatives of the infant.

Whitler v. Whitler, 3 P. Wms. 99.

If a bishop makes a lease for 21 years, and the lessee creates a trust thereupon, and the bishop dies, and his successor for a fine renews the lease; though he were not compellable to do so, and though there be no trust of the second lease, yet equity will subject it to the former trust.

Per Serjeant Powis, in Canc. 6 Mod. 57. Anon.

A. mortgaged a college lease to *B.* for 4000 *l.*, and secured the money likewise by statute to *B.*; *A.* died, and made *C.* executor. The executor renewed in his own name several times, until the original mortgage lease expired by efflux of time. It was decreed, that *B.* paying the several fines, gratuities, and charges which *C.* had expended on account of the renewal, should hold the premises until the debt were satisfied.

Luckin v. Rushworth, Finch's Rep. 392. 2 Ch. Rep. 113. S. C.

One of three lessees under a dean and chapter surrenders, and gets a renewal to himself. *Per Lord Keeper North*, It is a trust for all.

Palmer v. Young, 1 Vern. 277.

John Coombe, possessed of several leasehold houses holden of the crown; and having a daughter, *Joanna*, married to *Samuel Clarke*, devised unto such child or children, as his said daughter had, or should have, by *Samuel Clarke*, two of his leasehold houses, and directed, that the rents and profits should be applied for bringing them up, and educating them, and for placing them out, and setting them up, in such proportions as *Samuel Clarke* and his wife should think fit; and that they, and the survivor, should have power to divide the profits between their several children, when and in such parts as they should think fit. Part of the lease being expired, *Samuel Clarke* obtained an additional term from the crown for 25 years from the expiration of the term then in being. *Samuel Clarke* and *Joanna* his wife had two children, and on the marriage of *Coombe Clarke*, their son, to *Martha Detbie*, assigned one of the leasehold houses to trustees, for the remainder of the term then in being, and of the renewed term of 25 years, upon trust, to permit *Coombe Clarke* to receive the rents and profits for life, and then to permit *Martha* to receive the rents and profits for her life, and after her death to apply the rents and profits for the son of the marriage, for his education, and to convey the premises to him at 21. *Coombe Clarke* died, leaving *Martha* surviving, and several children, of whom *Samuel Clarke* was the eldest, who attained his age of 21, and survived his mother. *Martha*, after her husband's death, obtained an additional term of 28 years from the expiration of the existing lease, and afterwards made her will in 1748, and gave the residue of the estate in trust for her daughter *Mary Clarke*, an infant, and died in 1751. Upon her death, *Samuel Clarke* took possession of the house.

Taiter v. Marriott, Amb. 688.

house. He mortgaged it to the plaintiff in 1755, and died in 1756 intestate. *Coombe Clarke*, the next son, took out administration to his brother *Samuel*. *Mary*, the daughter, having married the defendant, *Marriott*, they got the tenant to attorn, and pay the rent to them. On a bill by the plaintiff to have an assignment of the 28 years term, and to be paid his mortgage money, or foreclose, *Marriott* and his wife set up title to the renewed term, as being obtained by *Martha* for her own benefit, and derived title to themselves under her will. The question therefore being, whether the additional term was to be considered as an interest acquired by *Martha* for her own benefit, or whether it should follow the uses of the settlement? Sir *Thomas Sewell*, master of the rolls, was of opinion, that the additional term was to be considered as an engraftment upon the old term, on the principle which prevailed in the case of *Rumford Market* and other cases; and followed the uses of the settlement and deed. Lord *Camden*, upon the appeal, was of the same opinion, and decreed accordingly.

Rawe v.
Chichester,
Ambl. 715.
1 Br. Ch.
Ca. 199.
n. S. C.

Richard Rawe seised of real estate, and possessed, among other things, of a lease of lands and houses in *Suffolk*, originally granted by *Cha.* 2. in right of the duchy of *Cornwall*, for 31 years, renewable from time to time, upon petition by the tenant in possession, for a further number of years, to fill up the term of 31 years, made his will 20th *December* 1761, and reciting his being possessed of leasehold houses at *Lambeth*, and of several estates in land in *Cornwall*, for unexpired terms of years, gave and devised the said several leases to his wife, for as many years of the term as she should live, and after her decease, (if the terms should be then in being,) he devised them to *William Rawe* for life, and after his decease, among such of the children of *William Rawe* as should be then living, and made his wife executrix and residuary legatee. The testator had renewed this lease just before his death, and the widow, during her life, renewed it several times, stating herself as widow and executrix of *Richard Rawe*, and continued in possession till her death in 1761, in which year she made her will, and disposed of these leases, as her own property. The question was, whether these renewed leases were the property of *Richard Rawe*, and to go according to the limitations of his will; or were the absolute property of the widow? Lord *Bathurst* thought, she renewed as executrix, subject to the trusts, in the will of *Richard*, and that the plaintiffs had a right to the renewed leases, repaying to the widow's estate the sum she had paid for the fine, deducting the value of her chance in the renewed lease.

Owen v.
Williams,
1 Br. Ch.
Ca. 199. n.
Ambl. 734.
S. C.

William Williams devised leasehold estates to Sir *William Burnaby*, in trust to renew the same, then to his wife for life, remainder to his brother *John Williams* for life, remainder to *Bennet Williams*, son of *John*, and the heirs of his body, and made his wife executrix. Several years of the lease being to come, Lord *Grosvenor* petitioned for a lease of the reversion. Mrs. *Williams* discovering this, presented her petition as executrix, giving

giving notice of it to the remainder-man, and got a report from the surveyor-general, that she was in possession, and that the fine ought to be about 1200*l.* or 1400*l.* Lord Grosvenor got a warrant from the Treasury for a lease, but was to pay her a compensation for her right. John and Bennet Williams then presented petitions for renewal. Lord Grosvenor made several offers to Mrs. Williams, who communicated them to John Williams; but it appeared both Lord Grosvenor and Mrs. Williams conceived them to be for her own benefit. At length they settled the terms at 3000*l.* Mrs. Williams gave notice to John and Bennet of the probability of their agreeing, and advised them to take care of their own interests.—It was contended on the part of Mrs. Williams, that this 3000*l.* was absolutely her property; and that John and Bennet had no claim upon her for any part of it. But Lord Bathurst held, that in case she had renewed, it would have been a renewal as executrix; that wherever a partial tenant renews, it is for the benefit of the whole; and therefore that the 3000*l.* given by Lord Grosvenor as a recompence for her not renewing, was subject to the trusts in the will.

John Pickering, the plaintiff's father, previous to his marriage with Ann, the plaintiff's mother, gave a bond to trustees in the penalty of 400*l.*, conditioned to be void if he should assign to them, or to other persons to be nominated by Ann, a leasehold estate for the term of 99 years, or such term as he should have therein, for three lives, of which Ann's should be one, to the use of himself for life, remainder to Ann for life, remainder to the issue of the marriage. Ann died under coverture, leaving the plaintiff and another child. The estate was conveyed to John, Ann, and another life. In 1776 John died, having made his will, and thereby given to Henry, his issue by a second marriage, all the rest and residue of his estate. It did not appear how many renewals of the estate had taken place, or for what lives, but that John's being the last original life, they were all exhausted in 1776.—For the executors of the husband, and Martha, the second wife, it was contended, that all the original lives falling in 1776, there was no obligation on the father, or his estate, to renew, and that the expence of renewal, having been his, it should be for his benefit. On the contrary, it was argued for the plaintiff, that this bond was purely a contract for a marriage settlement, and that the usual mode of executing it would be to insert a covenant to renew to the same uses, the object of the parties being to give as large an interest to the children as to the parents. For this was cited *Lawrence v. Maggs*, before Lord Northington, 26th Novem. 1759, that the usual form of the covenant being to keep the lease fully stated, the settlement must be so executed. In that case, the party had, while solvent, frequently renewed the lease, and conveyed it to the uses of the settlement; the creditors insisted, that the lease was part of his assets, and the conveyances fraudulent. But the court thought, that having conveyed according to the settlement, it was not fraudulent, but the settlement must be carried into execution. By Lord Chancellor Thurlow,—The ques-

Pickering
v. Vowles,
1 Br. Ch.
Rep. 197.

tion is, whether the father, having renewed, shall be considered as having so done for the benefit of the settlement, or for his own benefit? He did not, by the marriage settlement, or by any subsequent act, express any intent to do it for the benefit of the settlement, and by his will, he has given it, by sufficiently express words, to his son. If a man has estates of his own, and also pure trusts, and gives the residue by will, only his own estates will pass by the residuary clause; but if he has an interest, as well as a trust, the clause will pass both. But this is the case of a tenant-right, as it is called, which, though an improper, is become a technical term. In the West many estates derive their value from renewals. The crown also has many estates of the same nature. It has long been held, that where a trustee or an executor renews such an estate, it shall be for the use of the *cestuy que trust*. The rule has obtained with respect to a tenant for life, who has the opportunity of renewal from being in possession, that he shall not obtain the reversion for his own use. The court therefore obliged him to stand seised as a trustee to the uses of the settlement: that was determined in *Rae v. Chichester*, before Lord Bathurst. This is that case; for though John was author of the settlement, it was intended that the lease should be fully stated, and that he and she should have life estates, and that so fully stated, it should go to the children. The renewal therefore must be to that purpose. The son is entitled to the estate, paying the expence of the renewal.

*Lte v.
Vernon,
7 Br. P. C.
432.*

In 1661 a lease was granted by Cha. 2. under the seal of the Duchy of Lancaster, of the parks of Hanbury and Tutbury in the county of Stafford, to Edward Vernon for 31 years from Michaelmas in that year. In the following year another lease of these parks was granted by the king to Sir Thomas Morgan, to commence immediately after the expiration of the preceding lease. This lease becoming vested in Edward Vernon, he in 1678 obtained another reversionary term from the crown for 63 years from the expiration of the lease to Sir T. Morgan.

In 1687 Edward Vernon died, leaving issue two daughters, both of whom died without issue and unmarried. After his death the last-mentioned lease became vested in the appellant's father, who was accordingly in possession thereof until the time of his death, which happened in Oct. 1748. He left a widow, and the appellant, his only son, then about five years old. The widow, as executrix of her husband, and legatee of his personal estate, entered upon the premises comprised in the lease, and held them until her death in 1763. By her will she gave the appellant, her son, all the rest and residue of her personal estate, to be delivered up to him at his age of 21 years, or marriage; and under that bequest, he enjoyed the leasehold premises. These premises lying contiguous to the lands and castle of Tutbury, held by the respondent by lease from the crown, under the Duchy seal, he, in the year 1755, applied to Lord Edgeworth, then Chancellor of the Duchy of Lancaster, and represented to him, that he (the respondent) was the heir-male of the said Edward Vernon, and in possession of the family

family seat by inheritance from *Henry Vernon*, his great-grandfather, and that the said leasehold estates had been disposed of out of the family by the said *Edward Vernon*, or his representatives, and were very desirable to be enjoyed with the respondent's said seat; and therefore he requested of Lord *Edgumbe*, as a matter of favour, that a reversionary lease of the said parks might be granted to him, to commence on the expiration of the lease then subsisting. With this request Lord *Edgumbe* complied; and accordingly a lease of these premises was granted on 12th of *May* 1753 to the respondent for nine years and a half to commence in *Mich*, 1776, when the term of 63 years, granted by the lease of 1678, would expire: and for this lease the respondent paid a fine of 200*l*. In the year 1765, the respondent presented a petition to Lord *Strangt*, then Chancellor of the Duchy of *Lancaster*, praying a grant to him of the said parks and premises for such further term, as, together with the terms then subsisting, would make up 21 years. And in the years 1766 and 1768, two petitions were presented by the appellant to Lord *Strange*, praying, that a lease might be granted to him of the said parks for ten years and a half, to commence from the 5th of *April* 1786, when the lease now in question would expire, or for such other term as to his lordship should seem meet. In pursuance of an order made by Lord *Strange*, the matter of these petitions, on the part both of the appellant and respondent, came on to be heard before his lordship, in the presence of counsel for the parties, on the 8th of *April* 1768, when his lordship declared, that the tenant-right or lord's favour of renewal of the lease was in the appellant; and dismissed the respondent's petition, but suspended for the present all proceedings upon the matter of the appellant's petition, so far as the same respected the new leases prayed.—In *Hilary* term 1773, the appellant filed a bill against the respondent in the *Exchequer*, by which he prayed, that the respondent might be declared a trustee for him, as to the lease granted in 1755, and might be decreed to assign the same to the appellant for his own use and benefit; the appellant thereby offering to pay the respondent the fine of 200*l*. and all reasonable expences incurred in obtaining that lease, together with interest for the same from the respective times of payment. And as a ground for such relief, the bill charged, that when the said lease was obtained, the appellant was an infant of seven years of age; that the respondent had presented the petition, upon which that lease was granted, without the privity of the appellant's mother, in whom the possession of the premises then was; that no mention was made in that petition, as usual in such cases, of any term or interest subsisting in another person, nor any notice given to the appellant's mother of the application for such lease, but, on the contrary, the whole transaction was industriously concealed from her; and that the petition for obtaining such lease had unduly stated, that the respondent would have been entitled to the premises, if *Edward Vernon* had not disposed thereof; but the appellant charged, that the respondent was not of kindred to *Edward Vernon*. To this

bill the respondent filed a demurrer; on the argument of which, two of the barons were of opinion, that the demurrer should be allowed, and the other two were against the allowance of it, thinking, that the appellant ought to have the satisfaction of an answer to the bill, especially to such part thereof as sought a discovery of facts. Upon this the respondent put in an answer, in which he admitted, that when the lease was granted to him, the appellant was an infant; and that he did not give notice to the appellant's mother, when he applied to Lord *Edgecumbe* for a grant of the lease; but he denied that he had industriously concealed the transaction from her, and insisted, that he was not in any respect bound to disclose it to her, or to inform Lord *Edgecumbe* that she had at that time any interest in the premises; for that he had been informed, and believed, that until Lord *Strange* became Chancellor of the Duchy, no certain rules had ever obtained with respect to granting leases of Duchy lands; but that the Chancellor of the Duchy for the time being had always been used to grant leases of estates held thereof to such persons as he thought fit, without regard, and without giving notice to the lessees or tenants in possession thereof; and though the respondent believed, that previous to the grant of the said lease to him, and after his personal application to Lord *Edgecumbe*, and his compliance with the respondent's desire, a petition had been presented to Lord *Edgecumbe*, to the effect stated by the appellant, yet that such petition was prepared as a matter of course, and in compliance with the forms of the office, without the respondent's direction or privity, and to the best of his remembrance was not signed by him: and he declared by his answer, that he never did assert, either to Lord *Edgecumbe*, or any other person, that he should have been entitled to the said leasehold premises, had they not been disposed of by the said *Edward Vernon*, nor did he obtain the said lease on any such or the like suggestion, but merely as being heir-male of the said *Edward* and *Henry Vernon*, and of the senior branch of the *Vernon* family, and in possession of the family seat and estates in the neighbourhood of the said leasehold premises, and as a matter of friendship from Lord *Edgecumbe*, and a favour from the crown to the respondent, whose relation *Edward Vernon*, originally obtained the grant of the said parks from King *Charles* the Second in consideration of many acceptable services, and in particular of money, to a considerable amount, advanced to the king during his exile at *Brada*.—To this answer the appellant replied, and passed publication, but did not examine any witnesses.—Upon the hearing of the cause, Feb. 24th, 1775, the court was equally divided, the Lord Chief Baron *Smythe* and Mr. Baron *Eyre* being of opinion, that the bill should be dismissed; Mr. Baron *Perrot* and Mr. Baron *Burland* being of opinion, that the respondent should be declared a trustee of the lease in question for the benefit of the appellant. In consequence of this equal division, the cause was to have been heard before the Chancellor and Barons of the Exchequer, but before it came on Mr. Baron *Perrot* died, and therefore it was recommended by the court to the parties, that

that the bill should be dismissed without farther argument, in order that the appellant might appeal; and the bill was thereupon ordered to be dismissed, but without costs. Upon the appeal, the Lords affirmed the order of dismissal, but without prejudice to any application which the appellant had made, or might make, to the officers of the crown, as to the manner of their executing, in this case, the trust reposed in them by his Majesty.

Where a lessor has *expressly* covenanted to renew, what shall be the extent of such covenant, whether it shall be satisfied by the lessor's once renewing, or whether it shall amount to an engagement for a perpetual renewal, is a question, the decision of which must depend upon the words in which the covenant may be expressed, and the conduct of the parties, and particular circumstances of each case.

In a demise of corn-mills for 21 years, there was a covenant on the part of the lessor, that "if the lessee, his executors, &c. should, before the expiration of the term, be minded to renew, then, upon application, &c. the lessor, his heirs or assigns, should grant such further lease, as should by the lessee, his executors, &c. be desired, without any fine to be demanded therefore, and under the same rents and covenants only as in the then lease." The question was, whether there must be a covenant for renewal again in the second lease? The court of Exchequer were of opinion, that under the words *the same rents and covenants*, the covenant for renewal ought to be inserted; and on appeal to the House of Lords, their decree was affirmed.

Bridges v.
Hitchcock,
1 Br. P. C.
522.

Again, in a lease for three lives, the lessor covenanted, that he, his heirs, &c. should and would (in consideration of a certain sum to be paid to him, &c. at *Crewe Hall*, or at the place where the said Hall then stood, in the name of a fine, for adding one life to the remaining lives therein before mentioned) execute one or more leases, *under the same rents and covenants* which were expressed in the then lease, and so to continue the renewing of such lease or leases to the lessee or his assigns, paying as aforesaid to the lessor, his heirs or assigns, the sum before mentioned for every life so added or renewed from time to time. Lord Hardwicke held this to be a covenant for perpetual renewal, and decreed a new lease to be granted to the assignee of the original lessee with a covenant inserted in it to that effect.

Furnival v.
Crewe,
3 Atk. 83.

Again, in such a lease, the lessor had covenanted, that if the lessee, his heirs, &c. should be minded, upon the falling in of any of the lives, to surrender the demise and take a new lease; and thereby add a new life to the then two in being in lieu of the life so dying, that he, the lessor, his heirs, &c. upon payment of so much for every life so to be added, in lieu of the life of every of them so dying, would grant a new lease for the lives of the two persons named in the former lease, and of such other person, as the lessee, his heirs, &c. should nominate in lieu of the person named in the preceding lease, as the same should respectively die, *under the same rents and covenants*. There had been successive renewals from the time of the first lease; and in every lease the like

Cook v.
Booth,
Cowp. 819.

covenant for renewal had been inserted. The court of King's Bench held, that the lessors, by *their own acts* had construed this to be a covenant for perpetual renewal.

Hyde v.
Skinner,
2 P. Wms.
196.

But where a lessor covenanted to renew the lease at the same rents and upon the same covenants on the request of the lessee within the term, Lord *Macclesfield* held, that though the new lease was to be made on the same covenants, yet that should not take in the covenant for the renewing of the new lease, forasmuch as then the lease would never be at an end.

Russell v.
Darwin,
2 Br. Ch.
Rep. 639.
a.

So, where in a lease for years determinable upon lives, the covenant was, that the lessor would, upon the death of any of the appointees (by name), add a new third life upon payment of 200*l.* within six months; or upon the death of two of them (by name) within six months add two new lives upon payment of 500*l.*; or upon the death of all of them (by name) would, upon payment of 1150*l.* make a new lease or grant for any three new lives to be nominated and appointed by the lessee, his executors, &c. for the like term as was thereby demised, *at and under the like rent, covenants, and agreements therein contained*; Lord *Camden* was of opinion, that the lessors were not under any obligation to grant any farther lease than for three lives only, and that the lessee was not entitled to have any covenants inserted for a farther renewal; the words of the covenant not requiring the lessor to grant a new lease, but upon the death of some one of the persons named in that lease, and when they were all dead, no further renewal could be claimed.

Tritton v.
Foote, 2 Br.
Ch. Rep.
636.

So, under a covenant in a lease for 21 years, that the lessor, his executors, &c. would, at the end and determination of the said term of 21 years, execute a new lease of the demised premises, for the further term of seven years, to commence from the end of the said term of 21 years, thereby demised, *subject to the same rents, and pursuant to the same exceptions, covenants, reservations, conditions, and agreements in all respects, as were in and by the then granted indenture of lease mentioned and expressed*, in case the lessee, his executors, &c. should desire the same; the lessee, his executors, &c. first giving twelve months notice in writing to the lessor, his heirs or assigns, of his or their desiring such farther term of years as aforesaid; Lord *Thurlow* held the lessee entitled to a lease for seven years only, it appearing that the lessee himself had put that construction upon it.

Vipont
Charles v.
Rowley,
Ca. in the
House of
Lords,
1774.

Sir *A. Langford* Bart. being seised in fee of several farms and lands in the county of *Meath*, on the 22d of *March* 1697, demised the same to *John Charles*, his heirs, executors, administrators, and assigns, during the lives of *Alice Charles* his wife, *Richard Charles* their eldest son, and *John Ward*, and the longest liver of them, at the rent of 366*l.*, payable half-yearly, with the following clauses of renewal, viz. "That if the said *John Charles*, his heirs, executors, administrators, and assigns, within one full year next after the decease of any of the said persons, for whose lives the present demise and lease is taken, shall pay 100*l.* of good and lawful money, within the like space and time next after such

"decease

"decease as aforesaid, by way of fine, to the said Sir *A. Lang-*
 "ford, his heirs and assigns, he the said Sir *A. Langford*, his heirs
 "or assigns, to whom such payment of 100*l.* shall be made as
 "aforesaid, having then the immediate inheritance of the said
 "lands and premises, and such person or persons that shall make
 "such payment of the sum of 100*l.* by way of fine, then having
 "two lives still in being, and undetermined of this demise; and
 "the said person or persons then paying the sum of 100*l.* by way
 "of fine as aforesaid, then likewise tendering to the said Sir *A.*
 "L., his heirs and assigns, having the immediate inheritance of
 "the said lands and premises, a pair of deeds of indenture of
 "lease, fairly drawn and ingrossed on parchment, purporting a
 "deed of all and singular the said lands and premises, for the said
 "two surviving lives, mentioned and contained in these presents,
 "and for the life of such other person as shall be nominated and
 "appointed by such person and persons, paying such sum of
 "100*l.* by way of fine, and for the natural life of the longest
 "liver of them, and under such reservations of rent, covenants,
 "conditions, agreements, and clauses of renewal, as in the said
 "indented deeds are specified and contained;—that then, and in
 "such case, he the said Sir *A. L.*, his heirs or assigns, having the
 "immediate inheritance of the said lands and premises, and hav-
 "ing received the said fine of 100*l.*, shall seal, deliver, and per-
 "fect such new indenture of lease, so to be presented as aforesaid.
 "—Provided, that the person or persons paying the 100*l.* fine
 "as aforesaid shall, at the same time, deliver and perfect, as his
 "act and deed, a counter-part of such new indenture of lease,
 "and make sufficient surrender of the remaining interest hereby
 "granted, and deliver up this present indenture to be cancelled.
 "And it is further concluded and agreed by and between the said
 "parties to the said indented deed, that the said Sir *A. L.*, his
 "heirs and assigns, having the immediate inheritance of the said
 "lands and premises, shall, from time to time, and at all times
 "for ever hereafter, make all such further and other renewals
 "and leases of the said lands and premises, unto the said *John*
 "*Charles*, his executors, administrators, and assigns, for three
 "lives, viz. the two remaining lives, and one other life to be no-
 "minated, at and under the reservations of rents, covenants, con-
 "ditions, agreements, and clauses of renewal, as in the said in-
 "dented deed are specified and contained.—Provided, that the
 "parties requiring such renewal pay unto the said Sir *A. L.*, his
 "heirs or assigns, having the immediate inheritance of the said
 "lands and premises, the sum of 100*l.* by way of fine, for every
 "and each renewal, within the year next after the decease of
 "each of the said lives respectively. And provided, that all
 "former leases thereof be then sufficiently surrendered and can-
 "celled." There was no covenant on the part of the lessee to
 "pay the fine on renewal, or to accept a new lease *toties quoties*; nor
 "was any fine paid on the execution of this lease. *John Charles*
 "entered and had possession under the lease. On the 9th of *March*
 "1719, *Alice Charles*, one of the *cestuy que vies*, died, but no appli-
 "cation

Leases and Terms for Years.

cation was made for a renewal within the year, or for many years afterwards, though the lessee was frequently pressed by Sir A. L. to clear his arrears of rent, and take a renewal. In 1716 Sir A. L. died, having devised the estate to his nephew *Hercules Rowley*, the respondent's late father. In 1719 the lessee *John Charles* first made application for a renewal of the lease, and he then tendered to Mr. *Rowley* 100 l. as a fine for the renewal, with interest from the 9th of *March* 1711, being after *Alice Charles* the *cestuy que vie*'s death, together with a further 100 l. for a second renewal, (upon a supposition that if the lease had been regularly renewed on the 9th *March* 1711, and a life then inserted, such life would have subsisted no longer than seven years,) and interest also upon that last sum. He at the same time tendered a pair of leases, purporting a renewal for the life of *Thomas Hendrick* in the room of *Alice Charles*. These tenders being refused, and the renewal denied, *John Charles* immediately filed a bill against Mr. *Rowley* in the court of Exchequer in *Ireland*, *inter alia*, to compel him to renew. By a decree of that court of the 21st *February* 1723, this bill, so far as it related to a renewal of the lease, was dismissed. No motion was made to re-heat the cause; nor was there any attempt to reverse the decree. In 1746 *Richard Charles*, another of the *cestuy que vies* named in the lease, died, and within a few days of the expiration of the year after his death, a proposal was made to the respondent on the behalf of the appellant, who was the grandson of *John Charles* the original lessee, and entitled to an estate-tail in this leasehold estate under his will, for a renewal. This proposal the respondent refused to accede to, but apprehending from it that the appellant intended to pursue his claim to renewal, and being desirous that such claim should be brought to an early decision, he wrote to the appellant, offering to do every reasonable act to contribute to bring the matter to a conclusion with all possible dispatch. The appellant, however, acquiesced above six years longer, till 17th *September* 1754, when he filed a bill in nature of a bill of revivor of the suit which had been dismissed in 1723. But this bill, after several amendments and demurrers, was dismissed at the appellant's own request in *Trinity* term 1759; and in the *Michaelmas* term following he filed another bill as a new original bill, praying, that the respondent might be compelled to renew the lease of the premises, by executing a new lease thereof for the lives of the said *John Ward*, his present majesty, and the duke of *York*, with such reservations, conditions, covenants, clauses, and agreements as specified in the lease made to *John Charles*, upon the appellant's making such compensation or satisfaction to him for the same as to the court should seem just and equitable; and that the appellant might have an allowance for the costs and expences sustained by *John Charles*, and might be quieted in the possession of the lands; and that the respondent might be enjoined from proceeding at law concerning the premises till the hearing. To so much of this bill as sought a renewal of the lease; that the appellant might be quieted in the possession of the premises; and the respondent be enjoined from proceeding at law;

law; or a discovery of such matters as were, or might have been in issue in the former cause, on certain particulars, which were afterwards answered, the respondent pleaded in bar the former bill and decree in the court of Exchequer in 1719 and 1723. This plea came on to be argued before the court of Exchequer on 30th December 1763, when the court allowed the plea, but without prejudice to such other methods of proceeding as the appellant might be advised to take, in order to obtain the relief sought by his bill. This order however was reversed by the House of Lords in England, and the plea was directed to stand for an answer, with liberty to except and to save the benefit thereof to the hearing. On the 20th of May 1765 John Ward, the last cestuy que vie, died, and the bill being amended in order to put that in issue, the cause came on to be heard on the 12th of November 1772, when it was decreed by the court of Exchequer that the bill should be dismissed, but without costs. From this decree the appellant appealed to the House of Lords, where it was affirmed.

Apr. 24th,
1764.

By articles in writing of 4th October 1734, James Hamilton demised to Gustavus Hamilton the respondent's father, lands and mills in the county of Monaghan, to hold for the lives of the said Gustavus Hamilton and his two eldest sons, the respondent and George Hamilton, and the survivor of them, at the yearly rents therein mentioned, which the said Gustavus covenanted to pay: and it was agreed, that leases should be perfected at the request of either party, containing a covenant of re-entry and distress, as also a covenant of renewal for ever, paying half a year's rent as a fine in six months after the fall of every life then named, and thereafter to be named. At the time when this demise was made, the fee of James Hamilton's estate was in fact in Nathaniel Kane; a mortgagee of it, to whom it had been conveyed absolutely, by under-tenant lease and release in 1729: but Mr. Kane had permitted Mr. James Hamilton to continue in possession of it, and verbally promised to re-convey it to him, upon his re-payment of the purchase-money and interest within five or six years. Mr. J. H. however, not having re-paid the money within that time, Mr. Kane entered into possession, and shortly afterwards applied to G. H. to attorn tenant. In answer to this application G. H. said, that the rent was too high, and that he would give up the lands unless Mr. K. let them to him at a lower rent. Mr. K. thereupon consented to refer the yearly value of the lands to the consideration of two persons, who valued them at 30*l.* a year; in consequence of which Mr. K. consented to G.'s continuing tenant at will at that rent. About the year 1752, G. H. being in arrear for the rent of the said premises, requested Mr. K. to take them off his hands, and to forgive him the arrears; upon which Mr. K. directed his agent, John Speer, to conclude this business with G. H. on his own terms. Speer and Hamilton accordingly settled matters between themselves, and the latter, about November 1752, gave up the possession of the lands to Mr. K., either by a formal surrender, or by some writing purporting in substance to be a surrender, of which Speer soon after informed Mr. K., who rested satisfied with his

Kane v.
Hamilton,
Ca. in the
House of
Lords,
1776.

his account of the transaction without making any further inquiry. Soon after this, *G. H.* came to *England*, where he resided till *August* 1755, when he died intestate, leaving the respondent his eldest son and heir. In 1757 *Mr. Kane* died, and the appellant his son and heir entered, and continued in quiet possession of the premises from that time till the year 1763, when the respondent applied to him for a renewal of the lease, pursuant to the articles. This being the first intimation the respondent received of the articles, or that any person claimed any interest in the estate under *G. H.*, he communicated the same to his agent *Edmund Weld* in *Ireland*, he being himself at that time in *England*, and directed him to make strict inquiry into the respondent's claim. *Weld* accordingly wrote to *Speer*, informing him of the claim; and received an answer from him, in which he stated, that *G. H.* had made an actual surrender of the lease, which he (*Speer*) had given to *Mr. Kane*, and that he (*Speer*) had another actual surrender of it to *Mr. K.* A copy of this letter was sent by the appellant to the respondent, who never made any further claim during *Speer's* life, but soon after his death he filed a bill against the respondent in the Exchequer, praying to be restored to the possession of the premises, and that the appellant might be obliged to perfect leases thereof to him, renewable for ever, at the yearly rent of 36*l.*, and to account with him for the rents and profits since the death of *G. H.*, and pay him what should appear to be due on such account. The respondent having put in his answer, and issue being joined, the appellant filed a cross bill, praying that the respondent in the original bill might search the papers, books, and entries of the said *Gustavus Hamilton*, and if there was any copy or entry of the said surrender, or any letter or acknowledgment from the appellant of his acceptance thereof, or relative thereto, that he might set forth the same *in bec verba*, and might bring the same into court. It appeared, and was so admitted by the respondent's answer to the cross bill, that upon the death of *George Hamilton*, one of the *cestuy que vies*, in 1747, no application was made to *Mr. K.* for a renewal, nor was any step taken to enforce a specific execution of the articles, or to have a life inserted in his stead. It was also admitted by the respondent in his answer, that the great rise in the value of lands in *Ireland* since the year 1752, was the main inducement with him to attempt the recovery of the possession of this estate. But the respondent said, that he had been informed by *G. H.* that he never had made any surrender of the lease; in answer to which the appellant offered in evidence several letters of *Speer* to prove the fact of surrender; but these letters the court rejected, and decreed, that the respondent was entitled to a lease for three lives renewable for ever, and dismissed the cross bill with costs. Upon appeal to the House of Lords in *England*, this decree was reversed, and the respondent's original bill was dismissed.

Feb. 7th,
1776.

Bateman v.
Murray,
Cases in the
House of
Lords, 1779.

Edward Edwards being seised in fee of the manor of *Hastings*, and the lands therein comprised, situate in the county of *Tyrone*, by indenture bearing date the 28th *October* 1685, gave, granted, enfeoffed,

enfeofed, and in fee-farm let unto *Thomas M^cCausland*, his heirs and assigns, the two town-lands of *Claraghmore* and *Seagully*, being part of the lands comprised in the said manor, to hold the same to him, his heirs and assigns, in fee-farm for ever, viz. for the term of his natural life, and the natural lives of his two sons, *Andrew* and *John M^cCausland*, and the longest liver of them, at the clear yearly rent of 15 l. sterling, with two year old bullocks and one fat mutton. In the indenture there was contained (*inter alia*) a power of entry and distress for the rent, when in arrear, and an agreement, *that upon payment to the grantor or his heirs or assigns, of the sum of 7 l. 10 s. sterling, within three months after the fall of each of the said lives, he or they would add another life instead thereof, by a new indenture, continuing three lives for ever*; and a further agreement, that the said *Thomas M^cCausland*, his heirs and assigns, should make appear, at every *Easter* court-leet, and view of frankpledge, to be holden for the said manor, by two sufficient witnesses duly sworn, that the said three lives were then in being, in default whereof, it should be lawful for the said *Edward Edwards*, his heirs or assigns, to distrain for the said fine, although all the said lives should be then in being. But there was not any power of re-entry reserved to the grantor, in case of non-payment of the said rent or fines, nor was there any clause which declared the rent void, if the grantee should neglect to renew. In the year 1708, the original indenture and the lands therein comprised having become vested in the respondent's grandfather *James Murray*, and it being doubtful whether two of the lives, named in that deed, had not fallen, the estate was renewed by *Thomas Edwards*, the son and heir of the grantor, according to the terms of the original, and two new lives were inserted in the room of those supposed to be fallen. In 1724 *James Murray* conveyed his interest in the estate to his son *George Murray*, by virtue of which he entered into possession, and enjoyed the lands till his death; and during all that time paid the reserved rent. The said *Thomas M^cCausland*, one of the lives named in the deed of renewal of 1708, died in the year 1741; *James Murray*, another of the said lives, died in the year 1746; and the said *George Murray*, the other of the said lives, died in 1763 intestate, leaving the respondent *Sophia* his widow, and the respondent *William* his eldest son and heir, then a minor, who thereupon became entitled to the said lands, under a marriage settlement, subject to a jointure to the respondent *Sophia* his mother. At this time, the appellant, the Countess of *Ross*, who was the grand-daughter of *Thomas Edwards*, under whom the lease was renewed, and who was entitled to these lands under her father's will, resided in *England*, where she continued till some time in the latter end of the year 1763, or the beginning of 1764. Soon after her return to *Ireland*, the respondents caused deeds of renewal to be prepared, pursuant to the covenants for that purpose in the original indenture of *October* 1685, and sent the same to the countess, with a sum of money, as they alleged, sufficient to pay her all the renewal fines, with interest, which would be due to her on her executing such deeds of renewal. Instead of

complying

complying with this application, the countess brought an ejectment, in *Easter* term 1763, for the recovery of the premises in question; upon which, before any judgment was obtained, the respondents in *June* 1765 filed their bill in the court of Chancery in *Ireland* against the appellants, PRAYING, That she might be compelled to execute a new lease of the premises in question, pursuant to the covenant for renewal in the said original indenture of *October* 1685, under the rents and with the covenants in the said indenture contained; and that she might be restrained in the mean time by injunction from proceeding in the said ejectment. The appellant, Lady *Ross*, by her answer insisted, that the respondents were not entitled to a renewal upon two grounds; the one was, an agreement made between *James* and *George Murray* with her father *Hugh Edwards*, and in part carried into execution, for the purchase of their interest in the premises; the other was, that neither *George Murray* nor the plaintiffs had complied with the terms of the covenant for renewal, by not paying or tendering the fine within three months after the death of the lives. Issue being joined, several witnesses were examined on each side. The cause came on to be heard before the Chancellor of *Ireland* on the 20th of *July* 1772, when the following issues were directed to be tried, *viz.* Whether any, and what agreement was entered into by the said *James* or *George Murray* for a sale of their interest in the said lands, and of the said lease thereof? And in case there was any agreement, whether the same was carried into execution, or whether the same was varied, or departed from, by the parties thereto, or either of them? The jury, by their finding, negatived any such agreement at all. The cause afterwards came on to be heard on the judge's certificate and merits, when the respondents' right of renewal was contested on the ground of laches in having neglected to renew; but the Chancellor was pleased, on the 22d *April* 1777, to order and decree, that the respondents were entitled to a renewal of the said lease, according to the true purport and intent of the said deeds of *October* 1685 and *November* 1708, upon payment of the several fines and interest; and of the rent and arrears of rent and duties become due. From this decree, and the said decree or order of 20th *July* 1772, the appellants appealed to the House of Lords in *England*, when their lordships were pleased to order and adjudge that the decrees be reversed, and the respondents' bill dismissed.

Feb. 18th
1779.
This reversal, though perfectly consonant

to English principles, gave great dissatisfaction, and occasioned considerable alarm in *Ireland*. It was said to clash with a local equity, the old equity of that kingdom, where these leases were considered on both sides as a kind of inheritance; where they had been introduced soon after the country was recovering from the convulsions of the great rebellion in the last century, for the purpose of raising an useful and respectable tenantry, and the improvement of agriculture, and where, upon that policy, they had ever been protected and preserved by the courts of equity, whose practice it had invariably been, to fill up the lives, upon the tenant's neglect to renew, provided there was one life still subsisting, that is, provided there was a legal estate for the equity to attach upon. In consequence therefore of this alarm, an act was passed on the 19th and 20th of the King, c. 30. which revives the old equity, and provides, that in all cases of mere neglect, where no fraud appears to have been intended, no dereliction on the part of the tenant, by neglecting or refusing to renew after the landlord has demanded the fine, courts of equity shall relieve upon an adequate compensation being made. See *Vernon and Scriven's Reports of Cases in Ireland*, p. 135. and the case of *Magrath v. Lord Muskerry* in the same book, p. 166.

In a lease granted in 1739, by the mayor and burgesses of *Leominster* for 99 years, determinable on three lives, there was a covenant on the part of the lessors, "that they and their successors, when and as often as either of the said three lives should die, and there should be *only two lives remaining in the premises*, if the lessee, her executors, administrators, or assigns, should, within the space of six months next ensuing the decease of such life, or at the first or second chamber which shall be held after the expiration of the said six months, apply for a new lease of the said premises, and pay a fine of 4*l.* for a new lease of the said premises, and pay the sum of 4*l.* to the bailiff, &c. with six months interest for the said 4*l.*, after the rate of 5*l.* per cent. the said bailiff, &c. should add a third life in the said premises, and grant to her or them a new lease of the said premises for 99 years, to commence from the time of such payment, if the two other lives, and such other life as should be nominated by the said lessee, her executors, &c. or either of them, should so long live, under the like rents, covenants, and agreements, and to the several uses and trusts therein before declared, and so from time to time ever after, as often as the case should so happen." There were several renewals of this lease on account of the death of the *cestuy que vies*: the last was in the year 1763, and the lives for which the lease was then granted, were *Adam Ward* and *Mercy* his wife, and the plaintiff's. In 1764 *Adam Ward* assigned for a valuable consideration the beneficial interest in the lease to the plaintiff, who entered under such assignment. *Adam Ward* died in 1781 and his wife in 1789, and soon after her death, the plaintiff applied to the corporation for a new lease, offering to pay them 4*l.* with interest from the death of *Adam Ward*, and also 4*l.* as a fine for renewal, on the death of *Mercy Ward*, and a further sum of 4*l.* upon a supposition, that if plaintiff had renewed the lease on the death of *Adam Ward*, by putting in another life, such other life might have fallen in between the death of *Adam Ward* and *Mary Ward*. This the corporation refused, insisting, that no application having been made to renew till the falling in of the second life, they were not bound to renew upon the terms of the covenant, but were at liberty to impose such terms as they pleased. It was contended on the part of the plaintiff, that, although the covenant was only to renew on the falling in of one life, yet the spirit of the covenant extended to the case of two lives falling in: that the case lay in compensation, and that no forfeiture is to be incurred when compensation can be made. But Lord Chancellor said, the cases upon *Irish* leases in the House of Lords went the whole length of this case; that the plaintiff was not bound to renew upon the falling in of one life; he had his election whether to renew or not, and has made that election; the corporation therefore are not bound now to renew. It has been determined over and over in the *Irish* cases.

However, where a compensation can be made, where the tenant's neglect can be reasonably accounted for, it is the general disposition

Bayley v.
the Corpo-
ration of
Leominster,
3 Br. Ch.
Rep. 329.

Sweet v.
Anderson,
2 Br. P. C.
430.

disposition of courts of equity to relieve in a lapse of this kind. The measure of compensation introduced in *Ireland* by the Lord Chief Baron *Gilbert* was, by allowing the lessor septennial fines; that is, by giving him a fine for every seven years which had lapsed since the fall of a life, and interest upon each fine from the time of its being supposed to have accrued due, calculating from the probabilities of human life, that if another life had been added at the regular period of renewal, the duration of such life would not have exceeded the term of seven years. This was first done in one of the Duke of *Ormond's* leases: the Duke had granted a lease in 1697 for the lives of the lessee, and his nephew *John Anderson*, and *V. B.*, and of the survivor, and had covenanted, "that as often as any of the lives should happen to fail, he would at the request of the lessee, his heirs or assigns, and upon payment of all rents of the said premises, that should be then in arrear; and advancing and paying, by way of fine, within twelve calendar months next after the death of each life, 16*l.* 13*s.* 4*d.*, renew, and make a new lease of the said several lands, &c. to the lessee, his heirs and assigns, at and under the yearly rent and reservations, and with the covenants, conditions, and provisos contained in the said lease: with the like clause for being dispunishable of waste, and the like covenant for renewal of such two lives, as should be then in being, and also for one other life, to be added in the place and room of such of the three lives as should, from time to time, happen to fail. Provided, that, if when such new lease or renewal was to be made, more than one of the *cestuy que vies* beforementioned should be dead, there should be named in such lease so many other lives in their stead; and there should be paid to the person renewing a fine, of the value aforesaid, for each of the said *cestuy que vies*, who should be dead at the time of such renewal." The lessee himself died in 1714, and upon his death the respondent, who was the devisee of this estate, applied to the appellant, who had purchased the Duke of *Ormond's* reversionary interest, for a renewal of the lease, and that another life might be inserted in the room of that which had dropped; and at the same time tendered the fine of 16*l.* 13*s.* 4*d.*, all rent and arrears being discharged; but the appellant refused to renew, insisting that *John Anderson*, one of the *cestuy que vies*, had been absent from *Ireland* ever since the year 1697, and therefore must be presumed to be dead, and that no tender of a fine for renewal having been made within twelve calendar months after his absence, the respondent had lost his right of renewal. The respondent thereupon filed his bill in the court of Exchequer to oblige the appellant to renew the lease by inserting a new life in the room of the lessee's: but it appearing that *John Anderson*, the other *cestuy que vie*, had been a long time absent from *Ireland*, and there being no positive proof of his being alive, the court ordered the bill to be amended by inserting a tender of the fine for the second life; and the respondent having made such tender, and amended his bill accordingly,

ordingly, they decreed the appellant to renew, and make a new lease to the respondent for the lives named in the bill, and according to the covenant in the lease, on the respondent's paying the appellant 16*l.* 13*s.* 4*d.*, with interest from the 19th July 1704; another sum of 16*l.* 13*s.* 4*d.*, with interest from the 19th of July 1711; another sum of 16*l.* 13*s.* 4*d.*, and interest from the 19th July 1718; and on the respondent's also paying to the appellant the sum of 16*l.* 13*s.* 4*d.*, being the fine due on the death of the lessee; and all rents in arrear, duties, &c. pursuant to the lease. And this decree, upon appeal to the House of Lords, was affirmed.

A lease was granted for 21 years, under the yearly rent of 1*l.* with a covenant on the part of the lessor to renew before the end of the term for 21 years, and to renew from the end of such term for 21, 21, and 15 years more, making in the whole a term of 99 years. It was in effect, and so understood by the parties to be, a lease for 99 years, but the estate being copyhold holden of a manor in which no lease could be granted for more than 21 years, this mode was necessarily adopted in order to avoid a forfeiture. At the expiration of the first term, there being an arrear of rent due, and no application made for a renewal, the executor of the devisee of the lessor brought an ejectment, and obtained judgment and possession. But as when this ejectment was brought, the lessee was under difficulties, he being then a bankrupt; as it did not appear that there was not a sufficient distress upon the premises; as on the contrary it appeared, that the lessee had laid out a large sum of money upon them; as it was also in evidence, that the person to whom the lessee had mortgaged them, had endeavoured to stop the suit, by a treaty for a new lease, which had been refused; as the covenant did not expressly require any request from the lessee for further terms;—under all these circumstances, the Master of the Rolls held the lessee entitled to renewal on payment of the arrears of rent with interest, and the costs both at law and in equity.

Rawlstone v. Bentley,
4 Br. Ch.
Rep. 415.

That this indulgence in the courts of equity in the case of a tenant's neglecting to renew, is not of modern date, and that it hath been long ago carried to a considerable extent, will appear from the case immediately following, but which is cited for another purpose.

A court of equity in decreeing a renewal, will not always adhere to the literal import of the clause upon which such renewal is directed to be granted, but will regulate the term according to what it conceives to be the spirit and found reason of the clause; as in the following cases. An estate was devised for the purpose of founding an hospital: the trustees procured letters-patent for that purpose, with power for them to make orders and constitutions for governing the hospital; under which they ordained, that no lease should be made for above 21 years, the rent not to be raised, nor above three years rent to be taken for a fine, or *gressom*. The estate was originally leased at 120*l.* *per ann.* On a bill by the

Watson v. Hinfworth Hospital,
2 Vern. 596.

Master

Leases and Terms for Years.

Master and Hospital, Sir *Edw. Phillips* decreed the lessee to enjoy, paying 120 *l. per ann.* and afterwards the case was heard again by Lord *Ellesmere*, and although the lease was long before expired, his lordship decreed the lessee to account at 120 *l. per ann.* only, and to have a new lease for 21 years at that rent, notwithstanding it appeared the estate was, by the tenant's improvements, then worth 250 *l. per ann.* In 1663 it was decreed again by Lord *Clarendon*, assisted by *Hide*, C. J. and *Hale*, C. B. that the lease, having been some time expired, the tenant should account from the expiration of the lease, at 120 *l. per ann.* and that he should have a new lease on reasonable terms, and recommended it to the Archbishop of *York*, to call the parties before him, and to certify what terms were thought reasonable for a lease, who certified the hospital had agreed to accept a fine of 100 *l.* and 120 *l. per ann.* The present tenant having purchased the lease, and laid out a considerable sum in improvements, filed a bill for renewal.—Lord Chancellor—The constitution that the rent should not be raised, is just and charitable, for the encouragement of the tenant to improve the estate; and he ought to find a benefit in it; and the hospital will also find an advantage in having the rent well secured by an estate of greater value and constantly paid. But the rule or constitution is not to be followed according to the letter, that no more rent is to be taken than what was at first reserved; but as times alter, and the price of provisions, &c. increases, so the rent ought to be raised, in proportion. The tenant is entitled to a beneficial lease, but not at any certain rent: the constitution is not to be regarded in the letter, but in the reason of it. His lordship therefore referred it to the Master to certify the value of what had been laid out in improvements, and when that was ascertained, he referred it to the Archbishop of *York*, to certify what fine and what rent he thought reasonable.

Attorney-
General v.
Smith,
2 Vern. 746.

So, where a decree had been made by the Lord *Coventry*, for granting a lease of charity lands to *J. S.* (who had been at great expence in recovering them) for 99 years, determinable upon lives, at the rent of one third of the then improved value, to be renewable from time to time for ever without fine according to the value of the lands settled by a commission of survey directed by the court for that purpose; it was decreed, that the lease should be renewed *toties quoties* without fine, but that the rent was not to be computed according to the value of the land at the time of the decree, but according to the real improved value of the estate at the time of every renewal.

In mortgages and settlements of leases of this kind, it is usual to insert provisions for renewal. In mortgages, there is generally an agreement, that if the mortgagor neglects to renew, it shall be lawful for the mortgagee to renew, and that the fine and charges of renewal, shall be a charge upon the premises, and bear interest. In settlements, there should be a power authorizing the trustees, from time to time, to renew the leases, and for that purpose, to raise money by mortgage.

Where

Where such a provision is not inserted in a mortgage, the mortgagee cannot indeed compel the mortgagor to renew, but he may do it himself, and the money which he may so lay out shall be added to the principal of the mortgage, and carry interest at the same rate with the principal.

Manlove v. Ball, 2 Vern. 84. Lucan v. Martins, 3 Atk. 4. 1 Willf. 34. S. S.

Upon the omission of such a provision in a settlement, the expences of renewal are to be borne by the several persons interested in the estate in proportion to their respective interests. The old rule of ascertaining this proportion was by making the tenant for life pay one third of the expence or keep down the interest, and the remainder-man the other two-thirds. This rule perhaps may be proper where the nature of the estate, the will of the testator, or the circumstances of the case compel a renewal; but as a general rule, it would frequently be wrong: for suppose the devisee or grantee for life to be one of the persons upon whose life the estate is holden, and a renewal to be made by him; in this case, as there is no obligation upon him to renew, as the law will not permit him to renew but on the trusts of the settlement, and as he cannot possibly in any way enlarge his own interests, the fine and expence of the renewal must, in justice, be paid entirely by the remainder-man. This is evidently the case, where the devisee for life has the legal estate, and it should seem, that it is the same, where he is a *cestuy que trust*. Suppose again, an estate of limited duration, as an estate for years, or for the lives of strangers, to be limited to one for life, without any obligation upon him to renew; if such a person renew, it is manifest, that the contribution of a third must, in most cases, be very unfair and unequal. The true rule therefore in such case must evidently be, that the proportion follow the benefit; that the contribution of a person having such limited interest in the estate, and voluntarily renewing, shall only be in proportion to the benefit which he actually derives from such renewal.]

2 Ves. 429. Ambl. 88. 2 Br. Ch. Rep. 244. 2 Vern. 666. 2 Ves. 429. 2 Ves. jun. 652.

Addis v. Clement. 2 P. Wms. 459. Nightingale v. Lawton. 1 Br. Ch.

Rep. 440. Stone v. Theed, 2 Br. Ch. Rep. 243. If the estate be charged with annuities, the annuitants are not bound to contribute to the expence of renewal. Maxwell v. Ashe, Nov. 6, 1752. 1 Br. Ch. Rep. 444. n.

✧ *The Editor of the Fifth Edition of BACON'S ABRIDGMENT, having in his Appendix introduced some additional matter upon the doctrine of Leases, it has been thought advisable to subjoin it to the present work. An important case, which has but lately appeared in print, is likewise added.*

Of Leases made pursuant to Powers in private Conveyances and Settlements.

Wilson v.
Sewell,
4 Burr.
1795.
1 Bl. Rep.
617. S. C.

BY the statute of the 12th of *Car. 2.* the Master of the Rolls for the time being is enabled to grant leases of the ground and tenements belonging to the rolls, under these restrictions (among others) that after the premises shall have been once letten, he do not grant or make any *new or concurrent* lease, until within *seven years of the expiration of the lease then in being*; nor for any less rent than was reserved upon the former lease; nor for any longer term than for the term of *one and twenty years from the making of such lease*. Mr. *Verney*, Master of the Rolls, made a lease for 21 years from the 18th of *March 1740*, which would consequently expire on the 18th of *March 1761*. Sir *Thomas Clarke*, his successor, made a lease of the same premises on the 9th of *June 1755* for 21 years, in trust for himself: and on the 5th of *January 1762*, he made another lease of the same premises for 21 years in trust for himself. On the 5th of *June 1764* there was an actual surrender duly executed and accepted of the lease of 1755. On the death of Sir *Thomas Clarke*, his successor, Sir *Thomas Sewell*, disputed the validity of each of these leases of 1755 and 1762; insisting, 1st, that they were a fraud upon the trust, as being made in trust for the grantor himself. 2d, That the lease of 1762 was bad, because at the time it was granted, there were more than seven years to run of the lease of 1755. 3d, That if the lease of 1762 was void, then the lease of 1755 was absolutely gone, either by the *implied* surrender in 1762, or the *express* surrender in 1764. But the court over-ruled every objection. It is immaterial to the successor, who may be beneficially interested in the lease, so long as he receives the accustomed rent, and the lease is in other respects regular. The restriction as to a former lease is not to be confined to expiration merely *by effluxion of time*, but extends to surrenders, and re-grants may be made *toties quoties* upon proper surrenders, provided that the reversion be not charged for a longer time than 21 years in the whole. But the acceptance of a new lease implies a surrender of the old one, provided the new lease be, as the lease of 1762 was in this case, a good one.

By

By an *Irish* statute of 10 and 11 Car. 1. c. 3. § 2. governots of colleges in *Ireland* are empowered to demise for 21 years, reserving so much yearly rent or profits, or more, at the peril of the LESSEES who shall take the same; as the moiety of the true yearly value of the said lands, &c. (*communibus annis*,) at or immediately before the time of making such lease shall amount unto. A lessee surrendered an old lease, and took a new one, upon which the rent reserved did not amount to a moiety of the true yearly value of the premises demised. This lease is void against the successor.

Clements v. Waller, 4 Burr. 2154.

A. tenant in tail, with power to grant leases, remainder to B. the wife of C. in tail, conceiving himself to have obtained the fee under a void execution of a power, granted leases exceeding his leasing power, reciting in them that he was seised of the freehold and inheritance, and covenanting for quiet enjoyment against any act or default of himself or those claiming under him. A. devised the demised estates with others to B. for life, remainder to trustees to preserve contingent remainders, remainder to B.'s first and other sons in tail male, remainder to her daughter and her first and other sons, remainder to D. and his first and other sons successively in the same manner: he also gave to B. and C. other benefits by the will, and gave the residue to D. D. filed a bill to have the will established. B. elected to take her estate-tail in opposition to the will, which the Master reported to be for her benefit. After her death C., her husband, who had taken under the will, claimed as tenant by the curtesy, and brought ejectments against the lessees under the leases granted by A., some of whom had expended considerable sums upon their estates. These leases not complying with the conditions imposed by the power are absolutely void; for powers must be executed strictly. where the interests of remainder-men are affected. Nor can a court of equity, it should seem, relieve the lessees, or restrain C. from availing himself of the full effect of his ejectment suits. The lessees cannot say that C. shall not disturb their possession, because he has a part of those assets out of which they are entitled to satisfaction under the covenant against eviction; for if it is plain, that tenant in tail has made leases not warranted by the statute, and the estate-tail has descended, the issue in tail, though possessing large assets both real and personal, may eject the tenants; and there is no equity to compel him to confirm the leases. He may at his pleasure assume the possession; and the only remedy for the lessees will be an action of covenant. A court of equity cannot interfere, for a court of equity cannot measure the damages that may be given upon such an action. The lessees have trusted to a legal security, and can have no more.—Nor are the lessees in this case entitled to put C. to his election: they stand merely in the situation of creditors; but parties claiming to put a person to his election must claim specific rights under the same instrument.

Doe v. Lady Cavan, 5 Term Rep. 567. Dom. Proc. Maii 7, 1795. Lady Cavan v. Pulteney, 2 Ves. jun. 544.

Fitzg. 219.

A tenant for life under a marriage settlement of an estate in mines which were opened, with a power inserted in such settlement

Campbell v. Leach.

No new
mines were
opened un-
der this
lease, so that
this question
did not arise.

ment of leasing the *messuages, lands, tenements, and hereditaments* therein contained, except the mansion-house and warren, under the usual restrictions, that the lease should not exceed 21 years should be made in possession and not in reversion, reserve the best rent to be *incident to the immediate reversion*, &c. granted a lease for *twenty-six* years of the mines both *opened and unopened*, without reference to the power, and *before the expiration of a former lease*, reserving *ore as rent to him, his heirs, and assigns*. This new lease was granted to one of the two lessees in the former lease. The mines, it appeared, had been worked to very little advantage under the former lease, and as it would require new levels and other works which would be attended with a great expence to work them to more advantage, this lessee had proposed to execute them at his own expence, provided he had an additional term for 21 years. Upon this consideration the new lease was granted, and upon the faith of that lease extensive improvements were made by the lessee at a very great expence. Shortly after the new lease was granted, *A.* the tenant for life died, leaving an infant son, who then became tenant in tail in possession under the settlement. The guardian of this son permitted the original lessees to continue tenants of these mines, and received the rent reserved by the new lease for three years, when a bill was filed against the lessee under that lease to set it aside as not conformable to the power. Upon the hearing of the cause the bill was ordered to be retained for a year, with liberty for the infant to proceed at law to recover possession. The infant brought an ejectment, and the lessee being advised, that the lease could not be supported at law, made no defence, but brought a bill to have the benefit of the lease to the extent, and as far as it could be warranted by the power. This last bill was dismissed at the Rolls, and an account directed of the produce of the mines from the death of the tenant for life. But upon appeal from this decree, the Lord Chancery, assisted by *De Grey, C. J.*, and *Smythe, C. B.*, held, that under the circumstances of this case, if the rent should be found to be a fair rent, the lease, though clearly bad at law, ought to be executed in equity: and therefore directed an issue to try, whether the rent reserved were the most improved rent that could reasonably be gotten. As to the reservation of ore by way of rent, instead of money, ore, it was said by the court, was analogous to money, and a reservation of it will go to the remainder-man as money, though made payable to the *lessor, his heirs and assigns*. Though it was not in proof that the old lease was actually surrendered, yet, said the court, it must be presumed to have been so, the new lease having been acted under. As to the power of the lessee to enforce the contract against the remainder-man, they said, the objection that the remainder-man is neither party nor privy to the lease may hold, where the lease is made by a mere tenant for life; but under the power of leasing, there was a referable privy given by the settlement; and such tenant has a qualified power of contracting to bind the remainder-man. If the bill had been brought against the tenant for life in his lifetime, the

the lease would have been executed, and would then have bound the remainder-man. It must be understood the parties meant to execute it legally.

By what Form of Words Leases may be made.

ALTHOUGH no specifick words are necessary to create a lease, yet there must be words used which shew an intent to demise. Therefore, where a lessee of tythes agreed with the owner of lands for certain collateral considerations not to take tythes in kind from the tenants of the lands for twelve years, but to accept a reasonable composition not exceeding 3*s.* 6*d.* per acre, this was adjudged to be no lease. 1*st*, The rent affected to be reserved is uncertain: under this agreement it is at the option of the party either to pay tythes in kind, or to tender the reasonable value of the tythes, which may be under 3*s.* 6*d.* per acre. And 2*d*, The owner of the lands, the person with whom the agreement is made, is neither to enjoy any thing, nor to pay any rent. It cannot therefore be a demise to him. The tenants are not parties or privy to the transaction: it cannot therefore be a demise to them. It can, at the utmost, amount to no more than a mere covenant with *A.* that *B.* shall enjoy, and creates no lease to either.

Brewer v. Hill, Anstr. 413.

What Certainty is requisite to Leases for Years, as to their Beginning, Continuance, and Ending.

IF the parson of *D.* make a lease of his glebe for so many years as he shall be parson there, this lease is said to be void for the uncertainty of its continuance, because none can say how long the lessor will be parson; and then it cannot be a lease for years, when by no possibility the number of years can be ascertained. But, saith our author, it should seem, that if livery were made, the lessee will be tenant during the incumbency of the lessor, and so have the freehold in him, though for want of certainty in the number of years, he cannot be said lessee for years. This observation of our author has been sanctioned by the judgment of the court of Exchequer in a recent case: for the court after citing it, and acknowledging its justness, say, "But of rents or other things which lie in grant, the mere delivery of the deed has the same force as livery has in the case of land; and therefore any demise of uncertain duration gives an estate for life determinable on the particular event." They therefore held, that a lease of tythes "for all the time the lessor should continue vicar," was good without livery, and conveyed an estate for life to the lessee during the incumbency of the lessor.

Vide supra, vol. iv. pag. 174.

Brewer v. Hill, Anstr. 419.

Where the duration of a lease is not prescribed by the terms of the contract, but is left subject to the will of the parties, the law, for the sake of convenience, and that neither of the parties may be surprised or distressed by the caprice of the other, will

1 Term Rep. 162. Espin. Nl. Pri. Ca. 94. 267.

not permit the tenancy to be determined without a regular notice. What shall be a regular notice must depend upon the nature of the letting: hence, if the letting be originally for a month or week, a month's or week's notice will be sufficient. But, where there is a clear tenancy from year to year, the notice must be of half a year, not six months, at the least, and determinable with the year. This notice being required for the sake of convenience, it must, consequently, extend to a tenancy in houses as well as in lands; it may be waived by the party giving it; or it may be wholly dispensed with by the consent of both parties. But no collateral considerations, such as a reservation of the rent quarterly, shall be construed to be a dispensation with it. What shall be a waiver of a notice is a question of fact to be determined by the conduct of the party who has given it (a). The receipt of rent due after the expiration of the notice, *eo nomine* as rent, or the taking of a distress for such rent, have both been holden to be a waiver of it (b).

(a) *Vide*
Shirley v.
Newman,
Espin. Ca.
266.

Oakapple v.

Copons, 4 Term Rep. 361. (b) Goodright v. Cordwent, 6 Term Rep. 219. Zouch v. Willingale, 1 H. Bl. 311.

Where the tenant denies the right of his landlord, no notice from the landlord is necessary. The tenant controverts the right out of which the notice is to arise: he disclaims the relation of landlord and tenant: it is an instant determination of the tenancy on his part.

Doe v.
Watts,
7 Term
Rep. 83.

Although a lease granted by a tenant for life under a limited power of leasing, if it exceed that power, is absolutely void, and therefore incapable of confirmation by the remainder-man; yet, if the remainder-man accept rent, as rent, after the death of the tenant for life, he thereby admits that the lessee is *his tenant*, and therefore entitles him to a notice to quit.

Roe v.
Ward,
1 H. Bl. 97.

A tenant for life made a lease for years, to commence on a certain day, and died (before the expiration of the lease) in the middle of the year. The remainder-man received rent from the lessee, (who continued in possession, but not under a fresh lease,) for two years together, on the days of payment mentioned in the lease. This is evidence from which the court will presume an agreement between the remainder-man and the lessee, that the latter should continue to hold from the day, according to the terms of the original demise: so that *notice to quit ending on that day* is proper.

Doe v.
Kightley,
7 Term
Rep. 63.

The notice, except where the lessor means to proceed under the statute for double rent, need not be in writing: but, if it be in writing, a slight inaccuracy, where the intention of the party giving is apparent upon the face of it, will not vitiate it. Therefore, a notice delivered to a tenant at *Michaelmas* 1795, to quit at "*Lady-day which will be in the year 1795,*" was holden to be good.

Leases when forfeited.

UNDER a power of re-entry in case of non-payment of rent, the landlord cannot recover in ejectment at common law, unless he prove a demand on the very day on which the rent became due; nor under the statute of 4 G. 2. c. 28. unless he prove that there was not a sufficient distress on the premises.

Doe v. Wadlands, 7 Term Rep. 117. In consequence of this decision, it is

advisable to provide in the clause for re-entry, that in case the rent shall be demanded, on the expiration of the extra time usually allowed for the payment of it, or at any time afterwards, and shall not then be paid, it shall be lawful, &c.

Of the Renewal of Leases.

A Lease was granted of six acres of land for three years at 13*l.* a-year, with a covenant by the lessee to lay out 100*l.* in improvement, and with a covenant by the lessor at the end of the term to grant a new lease *under the same rents and covenants*. The estate being sold to the defendant, he refused to grant the new lease. The question simply was, whether the covenant to renew bound the land, or was merely personal to the lessor. A new lease was decreed.

Richardson v. Sydenham, 2 Vern. 447.

The defendant made a lease to *William Hyde* the plaintiff's late husband, of a house in *Enfield* for seven years at 35*l.* a year; and therein covenanted, (*inter alia*,) that he, his executors, administrators, or assigns, should before the end of twelve months before the expiration of the lease, if thereto required by the said *William Hyde* execute to the said *William Hyde*, a further lease of the premises *under the like covenants*, and at the same rent, as were therein contained, *for such further term as the said William Hyde should then desire*. Mr. Hyde died before the expiration of the lease; and the plaintiff, being his executrix, gave notice within the time limited by the lease, that she would take a new lease for a further term of *fifty* years, and now brought her bill to have a specific performance of the covenant and lease for fifty years pursuant thereto. The defendant insisted the covenant was personal only; and that Mr. Hyde being dead, the defendant was not obliged to make a new lease to his executrix. But Lord Chancellor was clear of opinion, that the plaintiff was entitled to the benefit of the covenant, and decreed the defendant to make a new lease at the same rent and *under the same covenants* as were contained in the old lease, *except the covenant for renewal, which was to be omitted*: but this lease was to be made for *twenty-one* years only; for though the covenant was general, that a lease should be granted for such further term of years as Mr. Hyde should desire, yet that must have a reasonable construction.

Hyde and Skynner, 11th Nov. 1723. This case, which is to be found in 2 P. Wms. 196. has already been referred to in vol. iv. p. 230. of this work: but this report of it is extracted from the manuscript collection of reports of the late Mr Melmoth, in the possession of Mr. Hargrave, and is published by the latter gentleman in his "Juridical

"Arguments," p. 426. It differs from the report in P. Wms. in the terms of the requisition for a new lease; the expression in Peer Williams's report being, that the lessor was to grant a further lease generally at the request of the lessee; whilst that in Mr. Melmoth's is, *such farther lease as the lessee should desire*.

Davis v.
Taylors'
Company,
25th of Mar.
1726,
Hargr. Ju-
rid. Argu-
ments, 427.

In a lease made by the defendants to the plaintiff's testator, of a house, for 21 years, there was a covenant, that the defendants at the end of the first seven years would upon the surrender of that lease make a new lease for the term of 21 years *at the same rent, and with the same covenants as were reserved and contained in the old lease*. The bill was for a specific performance of this covenant: and the question was, *if the covenant for renewal should be inserted in the new lease*. The Master of the Rolls, Sir Joseph Jekyll, was of opinion it should not there being no words to shew that it was the intention of the parties the lease should be renewed *toties quoties*; for that in effect would be to give the plaintiff a fee; and therefore decreed the defendant to make a new lease, *but without the covenant for renewal*.

Bettesworth
v. Dean and
Chapter of
St. Paul,
London,
Hargr. Ju-
rid. Argu-
ments, 428.
3 Br. P. C.
389. S. C.

The dean and chapter of *St. Paul, London*, being seised in fee of *Mountjoy-house* in *London*, on the site of which are the buildings now called *Doctors' Commons*, made a lease of the house and premises in 1567 to *Trinity-Hall* in *Cambridge*, for ninety-nine years from the determination of a subsisting lease, which had been granted to Sir *Thomas Pope* in 1555, and was then become vested in *Trinity-Hall*. The rent reserved was only 5*l.* 8*s.* a-year. But the house and premises were in *great ruin* and decay; and the lessees were to be at great expence in *new building*, and were to keep and leave the premises in good repair. Though *Trinity-Hall* were the nominal lessees, yet the lease itself expressed, that the premises were to be occupied by the society of doctors and advocates in the civil and canon law with the reserve of an apartment for the Master of *Trinity-Hall*; so that *Trinity-Hall* were lessees under a sort of trust for the doctors, who had removed from *Pater-noster-Row*, their former residence, and apparently meant to make *Mountjoy-house* their *fixed place of residence* in future. In the lease thus made to *Trinity-Hall* in trust for the doctors, there was a covenant by the dean and chapter, if *Trinity-Hall* should at any time during the term of 99 years surrender the lease, to make a new one for the fine of 20*l.* *for the number of so many years, and with ALL and singular the same covenants and conditions contained in this lease*, as the case of *Dr. Bettesworth* and the other appellants states the covenant, or *for the number of so many years and with ALL the same covenants, articles, and conditions expressed and contained in the said lease*, as the covenant is given in the case of the dean and chapter of *St. Paul*, the respondents. This covenant was followed by a covenant from *Trinity-Hall*, that if the dean and chapter at any time thereafter, as well as during the term of 99 years, should have need of counsel or advice in any cause or question concerning the ecclesiastical laws of the realm, then the advocates or doctors, on reasonable request from time to time by the dean and chapter, would freely give their best advice and counsel to them in every such matter or question. Within three or four years afterwards the statute of the 13th of *Eliz.* restraining deans and chapters, amongst others having spiritual promotion, from leasing for more than 21 years or three lives, was passed; and

and though there was a proviso in this statute against extending it to any lease which should be afterwards made *by reason of any covenant prior to the act*, yet this was so, that the lease to be made should not contain *more years than the residue of the years of the lease made before the act and then continuing lease* should be at the time of the lease, which should be made afterwards. By the act of the 14th of *Eliz.* the restriction from the act of the 13th was taken away as to houses in cities and towns corporate, but not so as to warrant any lease for any longer term than forty years. But the statute of the 18th of *Eliz.* made void all leases of ecclesiastical possessions, whereof there was any former lease having more than three years to run, and *all covenants for making such leases*. In consequence of these three statutes which seemed to impede the execution of the covenant to renew for 99 years, a contest arose in the year 1725 between the society of doctors at Doctors' Commons, and the dean and chapter: for then, not only the original term of 99 years was expired, but a subsequent term of 14 years (which in execution of a parliamentary power was added after the fire of *London* by order of the court of judicature created by the parliament on that occasion, and which so enlarged the 99 years when only 46 years of that term were unexpired into a term of 60 years) was within three years of expiring. Thus situate, the doctors filed their bill against the dean and chapter and *Trinity-Hall*, praying, that the dean and chapter might be compelled to renew to *Trinity-Hall* according to the exact terms of the covenant of renewal in the lease of 1567, or at least for 40 years, and *so from time to time in the way of perpetual renewal*. Under these circumstances of the case, the Lord Chancellour, with the concurrence of Lord *Raymond* and Judge *Price*, but against the opinion of Sir *Joseph Jekyll*, dismissed the bill of the doctors. But upon appeal to the House of Lords, the Lords reversed the decree, and ordered a renewal for 40 years for a fine of 20*l.*, and under the ancient rent with the covenants and conditions in the original lease *except the covenant of renewal*.

A lease was dated in 1744, and was of a water grist-mill, with houses, lands, a wear, and fishery, and was made in consideration as well of the lessee's *having at his own costs newly built a messuage or dwelling-house* on part of the premises demised, as of the rent and the covenants on the lessee's part: the lease was for ninety-nine years, determinable on the death of the survivor of three persons, at the yearly rent of 20*l.*, and six salmon of sixteen pounds each, and two hens: the lessee covenanted to repair, except in case of destruction of the mill, mill-stones, wear, and boat, by heavy rains in flood, or hard frost, and to leave the premises repaired, the lessor finding timber, brasses, and iron for the mill and wear, and carriage to them. Then there was a covenant by the lessee not to assign without the lessor's licence. That was followed by a covenant by the lessor, that when and as soon as any two of the three lives should drop, and one only be left, the lessor, his heirs or assigns, would, on payment to him or them by the lessee, his executors, administrators,

Reece v. Lord Dacre, Hargr. Jurid. Argum. 438. 2 Br. Ch. Rep. 638. S. C. cited.

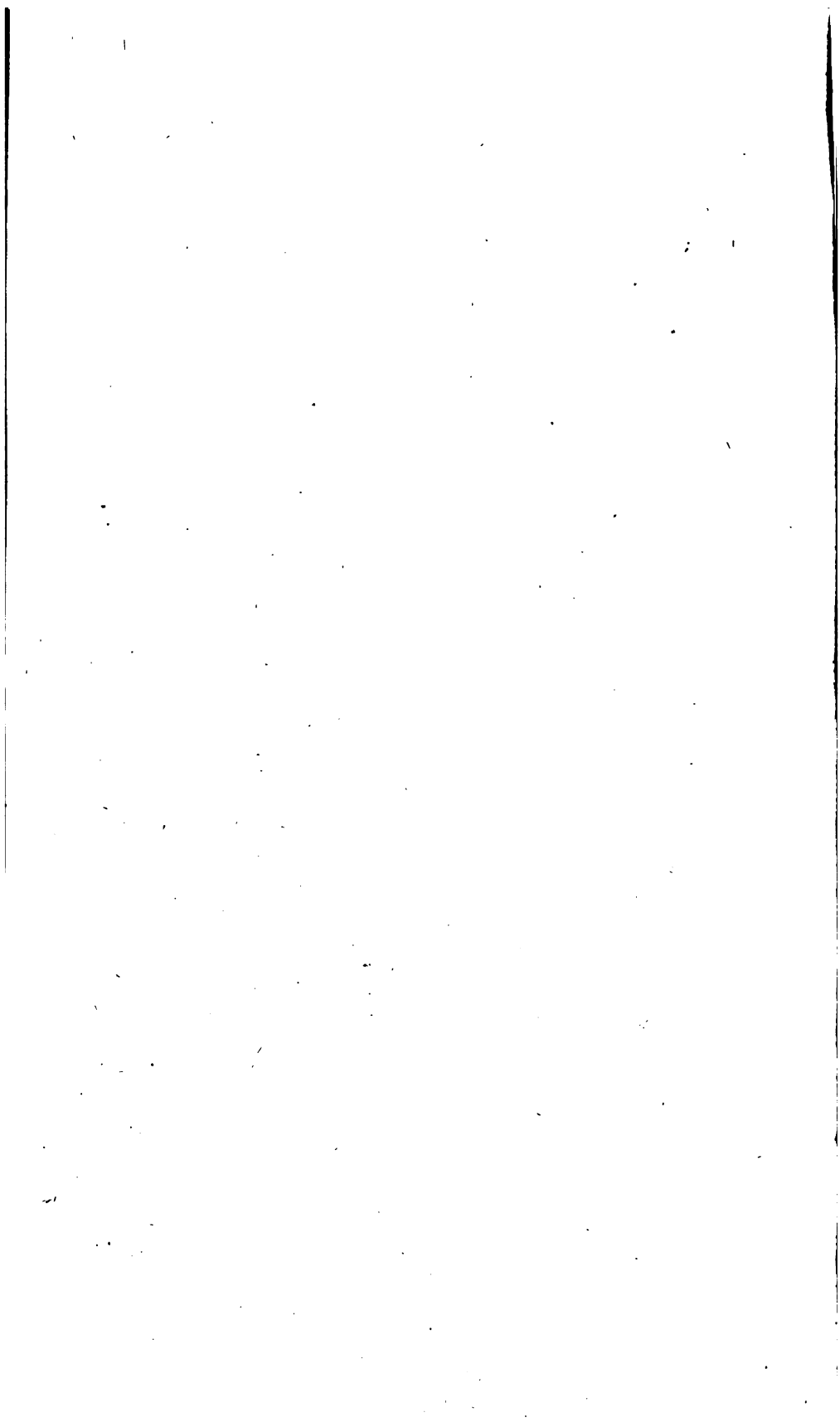
ministrators, or assigns, of 20*l.* in the name of a fine, consent to add two lives more to the one life then in being, and to grant a new lease for ninety-nine years if the two new lives and the old life should so long continue, at the said yearly rent of 20*l.* and hens and salmon, on the same days and in the same manner as by the said old lease; such new lease "to have and contain the same covenants, reservations, provisoes, conditions, and agreements." Upon this lease with this covenant of renewal, the question was, Whether in a new lease there should be a question of renewal? And the bill was brought to force a covenant for that purpose. The cause was heard before Lord *Thurlow* the 21st of *April* 1788. At the first his lordship was for dismissing the bill; but at last he ordered, that the cause should stand over to *Michaelmas* term, and that the plaintiff should be at liberty to bring an action on the covenant in the then term, and should proceed to try the cause in the next term. But no action was brought; and on the 4th of *July* 1788, the plaintiff gave notice of a motion to have the minutes of the decree of the 21st of *April* varied, by substituting, instead of the directions therein contained, an order referring it to the Master to settle a lease according to the covenant *without a covenant for perpetual renewal.*

Baynham v.
Guy's Hos-
pital,
3 Vez. jun.
295.
Vide etiam
Ross v.
Worlop,
4 Br. P. C.
411.
Pendred v.
Griffith,
Id. 512.

In a lease for 99 years, determinable upon three lives, granted in 1725, the lessor covenanted, within two years after the death of any one of the lives upon which the estate then was, or thereafter should be holden, at the request, costs, and charges of the lessee, to make a new lease of the estate to the lessee, *to commence from the expiration of the then lease*, for one life, or 99 years determinable upon such life, the lessee paying a fine of 53*l.* 5*s.* for every life so to be added, and so *toties quoties*, provided that such fine were tendered within two years from the day of the death of any of the *cestui que vies*, and as often as any of the *cestui que vies* should die. But it was expressly provided, that if, upon the death of any of the *cestui que vies*, the lessee should refuse or neglect to renew the said lease, or make application therein, or to act in or name one other life or lives in the place and stead of any life or lives so dying as above, beyond and more than the time and space of two years, and thereby also neglect or refuse a tender of such new lease, and to pay unto, or tender thereafter, to or for the use of the lessor, the sum of 53*l.* 5*s.* for a fine for every life to be thereafter added, in the church porch of the parish church of *Stretton*, and thereof give ten days notice to the lessor, his heirs, or assigns, or agents, the said indenture of lease, and every clause therein, should determine and be void.—After the execution of the lease, the lessor conveyed the fee-simple of the reversion to the defendants; and soon afterwards the lessee died, having by his will given the estate to his son and daughter, two of the *cestui que vies*, equally to be divided between them. The son died unmarried many years ago. The daughter married one *George Baynham*, and died in 1775, leaving her husband, and *Anthony* and *Lucy Baynham*, their children, surviving. *Anthony* obtained letters

of administration to his father, and died. The surviving *cestui que vie* died in *October* 1785. *Lucy Baynham* obtained letters of administration with the will annexed to the first lessee: she also obtained letters of administration to his son, and to her mother *Mary*, and administration *de bonis non* to her father *George Baynham*. With this title, in *August* 1786, she took the steps pointed out by the lease for obtaining a renewal; and upon the defendants refusing to renew, she filed a bill, praying that they might be decreed to grant a new lease, upon payment of such fine, and upon such terms as to the court should seem just and reasonable. But the Master of the Rolls dismissed the bill, being of opinion, upon construction of the clauses of the lease, that the right of renewal was forfeited; and that the lessor might, if he pleased, have ejected the lessee, for not applying when the first life dropped. The conduct of the lessor in not availing himself of it, his Honour said, was by no means to be used as an argument in support of the claim of the lessee; for that he most strongly protested against the doctrine of the case of *Cooke v. Booth*, (*supra*, and *Corp.* 819.) as to construing a legal instrument by the equivocal acts of the parties, and their understanding of it: that that case must have been overturned, if it had been carried to the appellate jurisdiction; and that it is negatived by *Tritton v. Foote* (*supra*, and 2 *Br. Ch. Ca.* 636.).

The doctrine of the Renewal of Leases is very fully and very ably discussed in the *Juridical Arguments*, with the publication of which Mr. *Hargrave* has lately obliged the Profession. See *Jurid. Argum.* p. 88. 411.



P R E C E D E N T S

OF

L E A S E S.

P R E C E D E N T S.

Leafe of a Prebend, for three Lives.

THIS INDENTURE, made, &c. BETWEEN the Rev. *Edward Edensor* of, &c. doctor of laws, prebendary of the prebend of *Moreton* in the county of *Hereford*, of the one part, and *Elias Edensee* of, &c. of the other part, WITNESSETH, that the said *Edward Edensor*, for and in consideration of the surrender of a former lease made by him as prebendary of the prebend of *Moreton* aforesaid of the premises hereinafter mentioned to the said *Elias Edensee*, by indenture bearing date the 15th day of, &c. and of the rents, reservations, covenants, conditions, and agreements hereinafter in and by these presents reserved and expressed respectively, and for other good causes and considerations him the said *Edward Edensor* thereunto moving, HATH demised, granted, and to farm letten, and by these presents DOTH demise, grant, and to farm let unto the said *Elias Edensee*, ALL that the prebend of *Moreton* in the county of *Hereford*, by whatsoever name or names the same hath been called or known, with all and singular the right, members, and appurtenances thereof; and also all that messuage and tenement in the parish of *Moreton* in the said county of *Hereford*, formerly in the occupation of *A. B. Gent.* or his assigns, late of *C. D.* and now or late of *E. F.*, his under-tenants or assigns, which messuage and tenement is part of and belonging unto the said prebend; and also all and singular the messuages, houses, edifices, buildings, barns, stables, gardens, orchards, glebe-lands, tythes, tenths, oblations, obventions, fruits, profits, commodities, emoluments, and hereditaments, whatsoever they be, with all and singular their and every of their rights, members, and appurtenances to the said prebend of *Moreton*, or any part or parts thereof belonging or appertaining, or reputed to be belonging or appertaining, or with the same prebend, premises, or any part or parts thereof now or heretofore used,

The parties.
Consideration.
Lease.
Parcels.

occupied,

occupied, or enjoyed, demised or letten, or accepted, reputed, or taken as part, parcel, or member thereof, or as belonging thereunto, or to any part or parts thereof; and all other the messuages, lands, tenements, tythes, tenths, and hereditaments of him the said *Edward Edensor* in the parish of *Moreton* aforesaid, or elsewhere in the said county of *Hereford*, belonging or appertaining to the said prebend, (except and reserved out of this present demise unto the said *Edward Edensor* and his successors, prebendaries of the prebend aforesaid, the advowson, donation, presentation, and patronage, from time to time and at all times, of and to the vicarage of *Moreton* in the same county,) TO HAVE AND TO HOLD the said prebend of *Moreton*, messuages, houses, barns, tythes, oblations, obventions, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore mentioned and intended to be hereby demised and granted, with all and singular their appurtenances, (except as before excepted,) unto the said *Elias Edensee*, his heirs and assigns, from the making hereof, for and during the natural lives of *William Brookes*, *Robert Williamson*, and *John Ellen*, and the life of the longest liver of them, YIELDING AND PAYING therefore yearly during the said term unto the said *Edward Edensor* and his successors, prebendaries of the prebend aforesaid, the yearly rent or sum of *l.* of lawful money of *Great Britain*, at two of the most usual feasts or times of payment in the year; (that is to say,) the feasts of the Annunciation of the Blessed Virgin *Mary* and St. *Michael* the Archangel, by even and equal portions during the continuance of this demise; and if it shall happen that at any time hereafter during the term aforesaid the said yearly rent of *l.*, or any part thereof, shall be behind or unpaid by the space of thirty days next after either of the said feasts at or upon which the same ought to be paid as aforesaid, and the same shall be demanded on the expiration of the said thirty days, or at any time afterwards, and not paid at the time of such demand, then and at all times thenceforth it shall and may be lawful to and for the said *Edward Edensor* and his successors, prebendaries of the said prebend, or his or their assigns, into the said prebend, hereditaments, and premises, or some part or parts thereof in the name of the whole, to re-enter, and the said *Elias Edensee*, his heirs and assigns, thenceforth to amove, expel, and put out, and

Exception.

Habendum.

Lives.

Reddendum.

Power of re-entry.

and the same prebend, tenement, and premises, with the appurtenances, to have again, re-possess, and enjoy as in his or their former estate; this indenture, or any thing herein contained to the contrary in anywise notwithstanding. AND the said *Elias Edensfee*, for himself, his heirs, executors, administrators, and assigns, and for every of them, DOth covenant, promise, and grant to and with the said *Edward Edensor* and his successors, prebendaries of the prebend aforesaid, by these presents, in manner and form following; (that is to say,) that he the said *Elias Edensfee*, his heirs and assigns, shall and will from time to time, and at all times during the term aforesaid, well and truly pay or cause to be paid unto the said *Edward Edensor*, his successors or assigns, the aforesaid yearly rent or sum of

Covenant
for payment
of the rent.

l. of lawful money of Great Britain, at the days and times hereby before limited and appointed for payment thereof, according to the reservation thereof aforesaid, and the true intent and meaning of these presents; AND that he the said *Elias Edensfee*, his heirs and assigns, shall and will, at his and their own proper costs and charges, from time to time during the said term, well and sufficiently repair, maintain, uphold, sustain, and keep all houses, lands, tenements, and premises, and every part and parcel thereof, and also the chancel of and belonging to the church of the vicarage of *Moreton* aforesaid, (except the houses and buildings of or belonging to the vicarage aforesaid,) in, by, and with all and all manner of needful and necessary reparations and amendments when and so often as need shall require; and the said premises, and every part thereof, being well and sufficiently repaired, maintained, upholden, sustained, and kept at the end of the said term, shall and will peaceably and quietly leave and yield up to the said *Edward Edensor* and his successors, prebendaries of the prebend aforesaid; AND ALSO, that he the said *Elias Edensfee*, his heirs and assigns, shall and will from time to time, and at all times during the said term, pay and satisfy all subsidies and tenths, and all charges and demands touching or concerning the same, or by means thereof, which from and after the enfeoffing and delivery thereof shall grow or become due to our sovereign lord the king that now is, his heirs and successors, out of and for the said prebend and premises, or any part thereof; and all and all manner of other taxes, impositions, rates, assessments, payments, burdens, and charges whatsoever which are and shall be issuing, payable,

For payment
of tenths and
taxes.

Except first-fruits and procurations.

Covenant by lessor for the payment of first-fruits and procurations :

and for quiet enjoyment.

able, or charged or chargeable out of or for or upon the said prebend and premises, or any part or parcel thereof, (except the first fruits and procurations,) and thereof shall acquit and discharge, or sufficiently save harmless, as well the said *Edward Edensor* and his said successors, as also the said prebend and premises, and every part thereof: AND the said *Edward Edensor* DOTH, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and grant to and with the said *Elias Edensee*, his heirs, executors, administrators, and assigns, by these presents, that he the said *Edward Edensor*, his heirs, executors, administrators, and successors, or some or one of them, shall and will, at his and their own proper costs and charges, from time to time during the three lives aforesaid, pay, discharge, and satisfy the first fruits, and all other charges and demands touching and concerning the same, and all other means thereof hereafter to grow due or payable out of or for the said prebend and premises, or any part thereof, to the king's majesty, his heirs and successors, or any of them, or to any other person or persons; and also all procurations, charges, duties, and demands now due and hereafter to grow, accrue, or become due to the bishop of *Hereford* for the time being, and his successors, or any of them, or to the archdeacon there for the time being, and his successors, or any of them; and of and from the said first fruits and procurations, and all charges and demands for or by reason thereof, or for or by reason of the non-payment thereof, or of any part thereof, shall and will from time to time, and at all times hereafter, free, acquit, and discharge, or sufficiently save and keep harmless, as well the said *Elias Edensee*, his heirs, executors, administrators, and assigns, and every of them, as also the said prebend and premises, and every part and parcel thereof: AND the said *Edward Edensor*, for himself, his heirs, executors, administrators, and assigns, DOTH hereby covenant and grant to and with the said *Elias Edensee*, his heirs and assigns, that he the said *Elias Edensee*, his heirs and assigns, for and under the aforesaid yearly rent of *l.*, payable in manner and form aforesaid, shall or lawfully may peaceably and quietly have, hold, possess, and enjoy all the said prebend and other the demised premises, with their appurtenances, during the three lives before mentioned, without any let, suit, trouble, eviction, or interruption of him the said *Edward Edensor*, his heirs, executors, administrators, or successors in anywise, or any person or persons lawfully claiming

ing or to claim from, by, or under the said *Edward Edensor* or his successors, or any of them, or by his, their, or any of their assent, privity, or procurement: AND the said *Edward Edensor*, prebendary aforesaid, HATH nominated, appointed, constituted, and ordained, and in his place put, and by these presents DOTH nominate, appoint, constitute, and ordain, and in his place put *Charles Cotton* of _____ in the county of _____ and *Walter*

Appoint-
ment by
lessor of at-
tornies to
give posses-
sion and
seisin.

Watson of _____ in the county of _____ jointly, and either of them severally, his true and lawful attorney and attornies for him the said *Edward Edensor*, for him and in his name and stead to enter into the said prebend and premises, or into some part or parts thereof in the name of the whole premises, and full, quiet, and peaceable possession and seisin thereof to take, or of some part or parts thereof in the name of the whole premises, for him and in his name and stead to take and have, and after such possession and seisin so taken and had, the like full, quiet, and peaceable possession and seisin thereof, or of some part or parts thereof in the name of the whole premises, for him and in his name and stead to give and deliver unto the said *Elias Edensee*, or his certain attorney or attornies in that behalf, TO HAVE AND TO HOLD to the said *Elias Edensee*, his heirs and assigns, for and during the natural lives of them the said *William Brookes*, *Robert Williamson*, and *John Ellen*, and the life of the longest liver of them, according to the form, effect, and true meaning of these presents, ratifying and confirming all and whatsoever his said attornies jointly, or either of them severally, shall lawfully do or cause to be done in the premises: AND the said *Elias Edensee* HATH nominated, appointed, constituted, and ordained, and in his place put, and by these presents DOTH nominate, appoint, constitute, and ordain, and in his place put, *George Owen* of _____ in the county of _____ and *Thomas Norcott* of, &c. _____ in the same county, jointly, and either of them severally, his true and lawful attorney and attornies for him the said *Elias Edensee*, and in the name and stead to take and receive of and from the said *Edward Edensor*, or of and from his attorney or attornies in that behalf lawfully authorised, full, quiet, and peaceable possession and seisin of the said prebend and premises, or some part or parts thereof in the name of the whole premises, and such possession and seisin thereof so had and taken TO HOLD and keep to the use of him the said *Elias Edensee*, his heirs and assigns, for and

Appoint-
ment by
lessee of at-
tornies to
receive pos-
session and
seisin.

PRECEDENTS

during the natural lives of them the said *William Brookes*, *Robert Williamson*, and *John Ellen*, and the life of the longest liver of them, according to the form, effect, and true intent and meaning of these presents, he the said *Elias Edensee* hereby ratifying and confirming all and whatsoever his said attornies jointly, or either of them severally, shall lawfully do or cause to be done in and about the premises. IN WITNESS whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Lease of a House, &c. under a Power given by Will for 21 Years, determinable on the several Deceases of the Lessor and his Wife; and a Lease of other Lands for the like Term.

Parties.

Recital of the will.

Lessor tenant for life.

THIS INDENTURE, made the day of 33d Geo. 3. 1793, BETWEEN *Edward Edensor* of, &c. of the one part, and *Elias Edensee* and *Jane Macgee* of, &c. widow, of the other part. WHEREAS *Edward Edensor*, formerly of, &c. aforesaid, Esquire, the deceased father of the said *Edward Edensor* (party hereto), by his last will and testament in writing duly executed and attested for the devise of lands of inheritance, bearing date on or about the day of in the year 1758, gave and devised unto and to the use of *William, Richard*, and *George Holland* therein named, and the survivor of them, his heirs and assigns, ALL and singular his manors, messuages, lands, tenements, and hereditaments whatsoever in possession, reversion, remainder, or expectancy, and all his right, title, and interest therein and thereto, UPON TRUST to pay his debts and funeral expences, and to raise portions for his the testator's younger children as therein mentioned; and from and after the raising monies, if wanted, for the payment of his debts and funeral expences, and also for the payment of the sum of money for his said younger children, and subject thereto, TO THE USE of his eldest son the said *Edward Edensor* (party hereto), and his assigns, for the term of his natural life, without impeachment of waste; and from and after the determination of that estate, by forfeiture or otherwise, TO THE USE of them the said *William*,

liam, Richard, and George Holland, and their heirs, during the life of the said *Edward Edensor* (party hereto), UPON TRUST to preserve the contingent uses and estates therein-after limited from being defeated and destroyed, and for that purpose to make entries and bring actions as the case should require; but nevertheless to permit and suffer the said *Edward Edensor* (party hereto) and his assigns, during his life, to receive and take the rents and profits thereof, and of every part thereof, to and for his and their own use and benefit; and from and after his decease, TO THE use and behoof of the first son of the body of the said *Edward Edensor* (party hereto) begotten or to be begotten, and of the heirs male of the body of such first son lawfully issuing, with divers remainders over: AND the said testator did thereby declare that it should and might be lawful to and for the said *Edward Edensor* (party hereto) and *William Edensor*, another son of the said *Edward Edensor* deceased, (to which *William Edensor* an estate for life was limited in remainder,) respectively from and after the raising and paying the aforesaid sums, and as they should severally become entitled under and by virtue of that his will, for their respective lives, to the said premises, by indenture under their respective hands and seals to demise and lease the said premises, or any part thereof, to any person or persons for any term or number of years not exceeding twenty-one years in possession, and not in reversion, remainder, or expectancy, so as upon every such lease there should be reserved and made payable during the continuance thereof the most and best improved yearly rent that could be had or obtained for the same, without taking any sum or sums of money, or other thing by way of fine or income, for or in respect of such lease or leases, and so as none of the said leases should be made punishable of waste by any express words therein, and so as in every such lease there should be contained a clause of re-entry for non-payment of the rent or rents to be thereby respectively reserved, and so as the lessor or lessees, to whom such lease or leases should be made, should seal and deliver a counterpart of such lease and leases as by the said will, proved in the Consistorial Court of the Bishop of *Exeter*, relation being thereunto had, and to which for greater certainty reference is hereby made, will more fully and at large appear: NOW THIS INDENTURE WITNESSETH, Power to lessor to demise for 21 years. Demise. that the said *Edward Edensor* (party hereto), in pursuance of

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of the power and authority given to him in this behalf, in and by the hereinbefore in part recited last will and testament of the said *Edward Edensor* deceased, and also by virtue and in pursuance of all and every other power and powers, authority and authorities whatsoever him in this behalf in any wise enabling, HATH demised, granted, limited, appointed, and to farm let unto the said *Elias Edensee*, *Jane Macgee*, their executors, administrators, and assigns, **Parcels.** ALL that messuage, tenement, or dwelling-house called, &c.; all which premises are situate, lying, and being in the parish of ——— aforesaid, and are now in the possession of the said *Edward Edensor* (party hereto), together with all houses, out-houses, edifices, buildings, courts, curtilages, commons, ways, waters, easements, and appurtenances whatsoever to the said messuage, tenement, or dwelling-house, gardens, orchards, meadows, close of land, and premises belonging, or in anywise appertaining, **Exception.** excepting, and always reserving out of the demise hereby made, all forest trees and saplings of forest trees now standing, growing, or being, or which at any time, and from time to time hereafter during the term hereby granted, shall stand, grow, or be in or upon the said demised premises, or any part thereof, **Habendum** TO HAVE AND TO HOLD the said messuage, tenement, or dwelling-house, gardens, orchards, meadows, close of land and premises, with the appurtenances, (except as aforesaid,) unto the said *Elias Edensee* and *Jane Macgee*, their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during and unto the full end of the full term or time of twenty-one years thence next and immediately ensuing, and fully to be complete and ended, if the said *Edward Edensor* (party hereto) and *Jane* his present wife, or either of them, shall so long happen to live, **Reddendum.** YIELDING AND PAYING therefore unto the said *Edward Edensor* (party hereto), and the person or persons who for the time being shall be entitled to the said hereby demised premises under or by virtue of the limitations contained in the will of the said *Edward Edensor* deceased, yearly and every year during the said term, and in that proportion for any less time than a year, (in case the said term shall determine in the middle of any current year,) the rent or sum of 42*l.* of lawful money of *Great Britain*, the said yearly rent to be payable and paid yearly during the continuance of the said term, and the proportionable part of the said yearly rent, (in case the

the said term shall determine in the middle of any current year,) by the death of the survivor of them the said *Edward Edensor* (party hereto) and *Jane* his wife, to be paid on the day of the death of the survivor of them the said *Edward Edensor* (party hereto) and *Jane* his wife: PROVIDED ALWAYS, and if it shall happen that the said yearly rent shall be in arrear and unpaid in the whole or in part by the space of thirty days, and shall be lawfully demanded on the expiration of the said thirty days, or at any time afterwards, and not paid at the time of such demand, then and in that case it shall or may be lawful to and for the said *Edward Edensor* (party hereto), or other the person or persons who for the time being shall be entitled to the said hereby demised premises by virtue of the limitations contained in the said will of the said *Edward Edensor* deceased, into and upon all and singular the said hereby demised premises, or into and upon any part thereof in the name of the whole, to enter or re-enter, and all and singular the said hereby demised premises to have again, retain, possess, and enjoy, as if these presents had not been made or executed; these presents or any thing in them contained to the contrary thereof in anywise notwithstanding: AND it is hereby agreed by and between all the said parties to these presents, that all the rates, taxes, and assessments, parochial and parliamentary offices, burdens, and impositions, which during the continuance of the said term hereby granted, inclusive of the land-tax, shall be to be paid, done, taken, discharged, and performed for or in respect of the said hereby demised premises, or any part thereof, shall be paid, done, taken, discharged, and performed by the said *Elias Edensee* and *Jane Macgee*, their executors, administrators, or assigns. AND THIS INDENTURE ALSO WITNESSETH, that the said *Edward Edensor* (party hereto), in consideration of the yearly rent hereby reserved, HATH demised, leased, and granted, and by these presents BOTH demise, lease, and grant unto the said *Elias Edensee* and *Jane Macgee*, their executors, administrators, and assigns, ALL that piece or parcel of ground (lately part of a field or close of land) belonging to a tenement and farm called otherwise situate in the parish of in the said county of and now converted into a way or road leading from house and court-yard aforesaid, through the field or close of land hereinbefore in part described to be called otherwise the into the

Power of re-entry in default of payment of rent.

Agreement that lessees shall pay all taxes.

PRECEDENTS

the publick road from as the same piece or parcel of ground or road, and the right to cut the wood off the same hedges, and to pare and prune the trees growing on the said piece or parcel of ground or road; AND ALSO the plot or parcel of ground or nursery in a corner taken out of the said piece or parcel of ground converted into a road as aforesaid, and which said nursery plot is now inclosed by a hedge, and also the hedge inclosing the said nursery plot, and the right to cut the growth of the same hedge, TO HOLD the same piece or parcel of ground or road, and the said plot or parcel of ground, nursery, and the said hedges and privileges, unto the said *Elias Edensee* and *Jane Macgee*, their executors, administrators, and assigns, from the day next before the date of these presents, for and during and unto the end of the full term of twenty-one years thence next and immediately ensuing, and fully to be complete and ended, if the said *Edward Edensor* (party hereto) and *Jane* his wife, or either of them, shall so long happen to live, YIELDING and PAYING therefore unto the said *Edward Edensor* (party hereto), his heirs or assigns, yearly and every year during the said term, the rent or sum of *l.* of lawful money of *Great Britain*, at or upon the 29th day of *September* in every year, the first payment thereof to be made on the 29th day of next *September*. IN WITNESS, &c.

A Lease of a Farm, for Years determinable on one Life; to commence after the several Deceases of the Lessee and her Daughter.

Parties.

Consideration.

Demise.
Parcels.

THIS INDENTURE, made, &c. BETWEEN *Edward Edensor* of, &c. of the one part, and *Eleanor Edensee* of, &c. of the other part, WITNESSETH, that the said *Edward Edensor*, as well for and in consideration of the sum of *l.* of lawful money of *Great Britain* to him in hand paid by the said *Eleanor Edensee*, at or before the sealing and delivery of these presents, as and for a fine (the receipt whereof, &c.) as in consideration of the rent, heriots, reservations, covenants, and conditions hereafter reserved, mentioned, and contained on the part of the said *Eleanor Edensee*, her executors, administrators, and assigns, to be paid, rendered, observed, done, and performed, HATH demised, granted, and to farm let and set, &c. unto the said *Eleanor Edensee*, ALL that one messuage and tenement

ment called *W.*, together with 52 acres of land thereunto belonging, be the same more or less, situate, lying, and being in *S. D.* quarter, within the parish and manor of *S. B.*, now in the possession of her the said *Eleanor Edensee*, or her under-tenants; and all ways, paths, passages, waters, watercourses, easements, profits, commodities, advantages, and appurtenances whatsoever to the said premises hereby granted, belonging, or in anywise appertaining; EXCEPT out of this present demise and grant, and always reserved unto the said *Edward Edensor*, his heirs and assigns, all and all manner of timber and other trees of what nature or kind soever, and young saplings likely to become timber, pollards, and other trees now standing, growing, or being, or which at any time hereafter shall or may stand, grow, or be in or upon the said demised premises, or any part thereof; with free liberty and full power for the said *Edward Edensor*, his heirs and assigns, and all other persons to be by him or them authorised and empowered, to fell, stub, cut down, root, work up, cart, and carry the same with men and with horses, carts, and carriages, and to sell and dispose of the same at all times and seasons; AND ALSO, except out of this present grant and demise, and always reserved unto the said *Edward Edensor*, his heirs and assigns, all coals, seams of coals, mines, minerals, and quarries of stone, beds of sand, gravel, marl, or clay, of what nature or kind soever, which now are, or at any time, and from time to time hereafter shall or may be found in or upon the said hereby demised premises, or any part thereof, with free liberty of ingress, egress, and regress to and for the said *Edward Edensor*, his heirs and assigns, and his and their agents, servants, and workmen, and all others to be by him or them the said *Edward Edensor*, his heirs or assigns, authorised to come into and upon the said hereby demised premises, and every or any part thereof, to work and dig for the said coals, mines, minerals, and quarries of stone, beds of sand, gravel, marl, or clay, and to sell and dispose of whatever may be there found at his and their respective wills and pleasures; AND ALSO to erect fire-engines, and to make waggon-ways, and to use all other inventions of what nature or kind soever for the winning, working, leading, carrying away, selling and disposing of the same; AND ALSO, except out of this present grant and demise, and always reserved unto the said *Edward Edensor*, his heirs and assigns, all liberties of hawking, hunting, fishing, fowling, and shooting; and

Exception of trees,

with liberty to fell them.

Exception of coal-mines,

with liberty to dig for coals,

and to erect fire-engines, &c.

Exception of liberty to hawk, &c.

Habendum
for years
determin-
able on the
death of one
person.

Reddendum.

Heriot.

Additional
rent for
pasture land
broken up.

and also all fish, wild fowl, hares, partridges, pheasants, and other game, waifs, estrays, goods, and chattels of felons and fugitives, and felons of themselves, deodands, treasure-trove, and all other royalties, casual profits, and franchises whatsoever at any time or times happening or being, or to be used or exercised upon the same premises, TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised and granted, or intended so to be, with the appurtenances, (except as before is excepted,) unto the said *Eleanor Edensee*, her executors, administrators, and assigns, immediately upon and after the several deceases of the said *Eleanor Edensee* and *Mary Edensee* her daughter, for and during the full end and term of fourscore and nineteen years, if shall so long live, YIELDING AND PAYING therefore yearly and every year from and after the commencement of the said term, and during the continuance thereof, unto the said *Edward Edensee*, his heirs and assigns, the rent or sum of 1*l.* 4*s.* of lawful money of *Great Britain*, at two equal half-yearly payments; (that is to say,) on the feasts of the Annunciation of the Blessed Virgin *Mary* and *St. Michael* the Archangel, by even and equal portions in every year, the first payment thereof to be made on such of the said feasts as shall first happen after the commencement of the term hereby granted; AND ALSO YIELDING AND PAYING unto the said *Edward Edensor*, his heirs and assigns, immediately upon and after the death and every assignment, surrender, and forfeiture of the said *Eleanor Edensee*, and so likewise of all and every other persons for the time being who shall be tenant or tenants of the said premises, or any part thereof, by virtue of these presents, the sum of 2*l.* 8*s.* 1*d.* for and in the name of an heriot or farlieu; AND ALSO YIELDING AND PAYING yearly and every year during the said term hereby granted unto the said *Edward Edensor*, his heirs and assigns, the sum of 5*l.* of like money for every acre of meadow or pasture ground, part of the premises that has not been ploughed or broken up within the space of fifty years before the day of the date of these presents, which the said *Eleanor Edensee*, her executors, administrators, and assigns, shall plough or break up, and so in proportion for any greater or less quantity of land than an acre; the said last-mentioned rent to be paid on the feast of *St. Michael* the Archangel in every year, without making any deduction or abatement thereout for taxes, or on any other account whatsoever; the first

first payment thereof to be made on the feast of St. *Michael* the Archangel which shall first happen next after the ploughing or breaking up of the same. AND the said *Eleanor Edensee*, for herself, her heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said *Edward Edensor*, his heirs and assigns, that she the said *Eleanor Edensee*, her executors, administrators, and assigns, shall and will well and truly pay or cause to be paid unto the said *Edward Edensor* the said yearly rents and heriots at the days and times; and in manner and form as the same are above reserved and made payable; AND ALSO that she the said *Eleanor Edensee*, her executors, administrators, and assigns, shall and will do her and their suit, service, and attendance at all and every the courts of the said *Edward Edensor*, his heirs and assigns, to be holden and kept in and for the manor of *S. B.* aforesaid, upon such reasonable notice and warning thereof as shall be given to other the tenants of the said manor, and pay and discharge all such fines, pains, and amerciaments as shall be set, taxed, and imposed upon her and them, as the same shall grow due and be required from time to time after the commencement of the said term, and during the continuance thereof; AND shall and will at her and their own proper costs and charges, when and as often as occasion shall require, well and sufficiently repair, sustain, uphold, maintain, and amend the same demised premises, and every part thereof, as well in houses, walls, coverings, timber, floorings, gates, posts, bars, stiles, hedges, ditches, and fences, as in all other needful and necessary reparations and amendments whatsoever after the commencement of the said term, and during the continuance thereof; AND at the end or other sooner determination of the same term, the said premises in good and sufficient tenantable repair shall and will peaceably and quietly leave and yield up the same unto the said *Edward Edensor*, his heirs and assigns, without doing or suffering to be done thereon any waste, spoil, or destruction; AND ALSO shall and will yearly, on some part of the said demised premises most convenient for the purpose, to be appointed by the said *Edward Edensor*, his heirs or assigns, or his or their steward or stewards for the time being, plant and preserve to grow unto timber three trees at the least of oak, ash, or elm, else shall forfeit and pay unto the said *Edward Edensor*, his heirs and assigns, the sum of 3*s.* 4*d.*

Covenant by
lessee to pay
rent;

to do suit
and service,
&c.;

to repair;

to lease the
premises in
repair;

to plant and
preserve
trees;

to concur
with lessor
in any game
prosecution;

to grind at
the lord's
mills.

Proviso for
re-entry on
non-pay-
ment of
rent;

or in case of
lessee's af-
signing or
under-let-
ting without
the consent
of lessor;

as a penalty for every tree not planted and preserved according to the true intent and meaning of this present covenant; AND ALSO shall and will from time to time, and at all times during the continuance of this present demise, permit and suffer her and their name or names to be made use of by the said *Edward Edenfor*, his heirs and assigns, and his and their steward and stewards for the time being, in discharging or giving notice to any person or persons not to come upon the said demised premises, or any part thereof, to seek for, hawk, hunt, course, chase, disturb, shoot, take, kill, or destroy any game, fish, or wild fowl, or to commit any other trespass, damage, or injury there or thereupon, and in commencing, prosecuting, and carrying on any action, suit, or prosecution against any person or persons for any such trespass, damage, or injury, and shall not nor will disavow or become nonsuit in any such action, suit, or prosecution, or otherwise release or discharge the same, she the said *Eleanor Edensee*, her executors, administrators, and assigns, being indemnified by the said *Edward Edenfor*, his heirs or assigns, from all costs, charges, and expences that shall or may be occasioned thereby in anywise; AND ALSO shall and will grind, or cause to be ground, all the grist, corn, and grain that shall happen to be used and spent upon the said demised premises at the lord's custody mills in *S. B.* aforesaid, or in default thereof shall and will yield, render, and pay unto the said *Edward Edenfor*, his heirs and assigns, sixpence for every bushel of such grist or corn that shall not be ground at the said mills: PROVIDED ALWAYS, that if the said yearly rents, or any or either of them, or any part or parts of them, any or either of them respectively, or the said heriot or farlieu hereby reserved and made payable, or any or either of them, or any part of them, any or either of them shall be behind, unyielded, or unpaid by the space of thirty days next after the same shall become due and payable according to the reservations aforesaid, and no sufficient distress or distresses shall be found in or upon any part of the said demised premises for levying and sufficient to answer the same, with the arrears thereof, if any, and all costs and charges to be occasioned by the non-payment, or by the not rendering of the same; or if the said *Eleanor Edensee*, her executors, administrators, or assigns, shall give, grant, or assign the said demised premises, or any part thereof, to any person or persons whomsoever, (other

(other than and except to her or their lawful child or children, and that for the whole of the said premises hereby granted,) for all or any part of the term hereby granted therein, or for any term or estate by way of underlease exceeding one year, without the licence of the said *Edward Edensor*, his heirs or assigns, in writing under his or their hand or hands first had and obtained; or if the said *Eleanor Edensee*, her executors, administrators, or assigns, shall give, grant, or assign only part of the said premises, or shall give, grant, or assign the whole of the said premises, to her or their lawful child or children, and such child or children shall give, grant, or assign the same premises, or any part thereof, to any person or persons whomsoever, without the like licence; or if the said *Eleanor Edensee*, her executors, administrators, or assigns, shall do or commit, or suffer to be done or committed, in or upon the said demised premises, or any part thereof, any manner of waste to the value of 20*l.* or above, and shall suffer the same to become ruinous and in decay to the like value or above, or shall not in a substantial manner repair the same when and as often as occasion shall require, then and thenceforth, for all or any of the causes aforesaid, it shall and may be lawful to and for the said *Edward Edensor*, his heirs and assigns, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as in his and their first and former estate and right; this indenture, or any thing herein contained to the contrary thereof in anywise notwithstanding. AND the said *Edward Edensor* for himself, his heirs and assigns, DOth covenant, promise, and agree to and with the said *Eleanor Edensee*, her executors, administrators, and assigns, by these presents, that she the said *Eleanor Edensee*, her executors, administrators, and assigns, (duly paying the rents above reserved, and yielding such heriot or farlieu as aforesaid, or paying such sum of money in lieu thereof, at the election of the said *Edward Edensor*, his heirs or assigns, and observing and performing the clauses, exceptions, conditions, provisoes, covenants, and agreements hereinbefore made and contained, and which on the part and behalf of the lessee, her executors and administrators, are or ought to be paid, observed, performed, fulfilled, and kept,) shall and lawfully

or in case of
waste.

Covenant by
lessor for
quiet enjoy-
ment.

PRECEDENTS

Proof of the
existence of
the life to lie
upon the
lease.

may peaceably and quietly have, hold, occupy, possess, and enjoy the said hereby demised premises, with the appurtenances, (except as before mentioned,) from and after the commencement of the said term, and during the continuance thereof, without the let, suit, trouble, eviction, disturbance, claim, or demand of him the said *Edward Edensor*, his heirs or assigns, or any other person or persons lawfully claiming or to claim from, by, or under him, them, or any of them: PROVIDED NEVERTHELESS, and it is hereby agreed by and between the said parties hereto, that when and as often as any question shall arise in any court of justice whether the person or persons, on whose death or deaths the term hereby granted is made determinable, be living or dead, it shall be incumbent on the person or persons then interested in or holding or enjoying the said premises, by virtue of or under this present demise, to prove such person or persons to be living, to the satisfaction of the said *Edward Edensor*, his heirs or assigns; and that in default of such proof, such person or persons shall be deemed and taken to be dead; these presents, or any law, usage, or custom to the contrary notwithstanding.

Lease of a Farm in *Devonshire*, for 14 Years, with special Covenants directing the Course of Husbandry.

Parties.

Consideration.

Demise.

Parcels.

THIS INDENTURE, made the day of *January* in the 33d year of *Geo. 3.* 1793, BETWEEN *Nicholas Edensor* of, &c. yeoman, of the one part, and *John Edensee* of, &c. yeoman, of the other part, WITNESSETH, that in consideration of the yearly rent, covenants, conditions, and agreements hereinafter contained, and on the part of the said *John Edensee*, his executors, administrators, and assigns, to be paid, done, kept, and performed, the said *Nicholas Edensor* HATH demised, leased, granted, and to farm letten, and by these presents BOTH demise, lease, grant, and to farm let unto the said *John Edensee*, his executors, administrators, and assigns, ALL that messuage, tenement, and farm, with the appurtenances, commonly called or known by the name of

of situate, lying, and being within the parish of
in the said county of *Devon*, now
in the tenure or occupation of the said *John Edenssee* as te-
nant to the said *Nicholas Edensor*, together with all houses,
out-houses, edifices, buildings, barns, stables, courts, curt-
lages, gardens, orchards, lands, meadows, pastures, feed-
ings, ways, paths, waters, watercourses, easements, pro-
fits, commodities, emoluments, and appurtenances what-
soever to the said messuage, tenement, and farm, or any
part thereof, belonging or in anywise appertaining, (EX-
CEPTING and always reserving out of this present demise
and grant unto the said *Nicholas Edensor*, his heirs and
assigns, all quarries and mines whatsoever, open or un-
opened, and all and all manner of timber trees and young
trees and saplings likely to become timber, of what nature
or kind soever, now standing, growing, or being, or which
hereafter shall stand, grow, or be in or upon the said de-
mised premises, or any part thereof, with free liberty to and
for the said *Nicholas Edensor*, his heirs and assigns, and
his and their servants, agents, and workmen, to go, come,
pass, and repass at all reasonable times, upon, over, and
through the said demised premises for the felling, rooting
up, and working and planting such trees and saplings, and
opening, ripping, digging, and drawing the stones and
minerals in such mines and quarries, and taking and carry-
ing away the same with any manner of carriages whatso-
ever, at the will and pleasure of the said *Nicholas Edensor*,
his heirs or assigns, doing no wilful waste or spoil,) TO HAVE
AND TO HOLD the said messuage, tenement, and farm, and
all and singular other the premises above-mentioned to be
hereby demised, with their and every of their appurte-
nances, (except as before excepted,) unto the said *John*
Edenssee, his executors, administrators, and assigns, from
the 25th day of *March* now next ensuing, for and during
the full term and time of fourteen years thence next ensu-
ing and fully to be complete and ended, YIELDING AND
PAYING therefore yearly and every year during the con-
tinuance of the said term unto the said *Nicholas Edensor*,
his heirs or assigns, the rent or sum of 38*l.* of lawful
money of *Great Britain*, by quarterly payments, in equal
portions, at or upon the four most usual feasts or days of
payment in the year, (that is to say) the 24th day of *June*,
the 29th day of *September*, the 25th day of *December*, and
the 25th day of *March*, the first of the said quarterly pay-
ments

Exception.

Habendum.

Reddendum.

PRECEDENTS

Covenant
for payment
of rent.

ments to be made on the 24th day of *June* next ensuing the day of the date of these presents: PROVIDED ALWAYS, that if it shall happen that the said yearly rent of 38*l.*, or any quarterly payment of the same, shall be behind and unpaid in the whole or in part by the space of thirty days next after any of the said days of payment whereon the same ought to be paid as aforesaid, and the same shall be demanded on the expiration of the said thirty days, or at any time afterwards, and not paid at the time of such demand, that then and from thenceforth it shall and may be lawful to and for the said *Nicholas Edensor*, his heirs and assigns, into and upon all and singular the said demised premises, with the appurtenances, or into and upon any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as if these presents had not been made; these presents or any thing in them contained to the contrary thereof in anywise notwithstanding. AND the said *John Edensee* doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said *Nicholas Edensor*, his heirs and assigns, that he the said *John Edensee*, his executors, administrators, or assigns, shall or will from time to time well and truly pay or cause to be paid unto the said *Nicholas Edensor*, his heirs or assigns, the said yearly rent or sum of 38*l.* at the days and times and in manner and form hereinbefore limited and appointed for payment of the same, according to the reservations hereby made thereof, and the true intent and meaning of these presents; AND ALSO that he the said *John Edensee*, his executors, administrators, and assigns, shall and will carry into and upon every acre of the said hereby demised premises which he or they shall till or break up for tillage, and in that proportion for every less quantity than an acre, except upon four closes of land, parcel of the said hereby demised premises, and called or known by the names of *Well Close*, *South Close*, *North Close*, and *Nether Close*, eight hogsheds of good well-burnt stone lime, and there lay, cleave, mix such earth, spread, cast abroad, and manage the same dressing according to good husbandry; and that he the said *John Edensee*, his executors, administrators, or assigns, shall or will carry into and upon every acre of the said four closes of land called *Well Close*, *South Close*, *North Close*, and *Nether Close*, that he and they shall till or break up to or for tillage, and in that proportion

portion for every less quantity of the same closes than an acre, five hogsheds of good well-burnt stone lime, and there lay, cleave, mix with with earth, spread, cast abroad, and manage the same dressing according to good husbandry; and that he the said *John Edensee*, his executors, administrators, or assigns, upon or after such dressing, shall and will have and take three crops of corn or grain only and no more, and these successively one year after another without the intermission of any year; and that only one of such crops, and that not the last, shall be of wheat, and the other two of barley or oats, or one of the one sort and the other of the other sort, and shall not nor will break up or till any part of the said premises for more than two courses of tillage (computing three crops of corn and grain to a course of tillage) during the said term; AND ALSO that he the said *John Edensee*, his executors, administrators, or assigns, shall or will, with the seeds of corn or grain to be sown in the *Lent* season of the last year before the end of the said term hereby granted, sow or cause to be sown at least six pounds of good new clover and two pecks of the best new caver-grass seeds an acre, and harrow, brush in, and cover the same grass seeds according to good husbandry; and that he the said *John Edensee*, his executors, administrators, or assigns, shall not nor will permit or suffer the grass which shall arise or grow from such grass seeds to be eaten or trodden down after *Christmas-day* in the last year of the said term, nor to be eaten too close or otherwise injured, contrary to the rules of good husbandry, at any time after the same seeds shall be sown; AND ALSO shall not nor will have or take more than one crop of potatoes in one field in any seven years during the said term hereby granted; AND ALSO that it shall and may be lawful to and for the said *Nicholas Edensor*, his heirs or assigns, at any time after the first day of *August* next preceding the end or determination of the said term, to thwart any one field, not exceeding acres of ground, part of the said demised premises, and to make breaches for wheat, and to till the ground so thwarted and broken up, and to hold the same from and after the thwarting or breaking up thereof thenceforth during the then residue of the said term, without making any deduction, allowance, or recompence in respect thereof; AND ALSO that he the said *John Edensee*, his executors, administrators, or assigns, shall not nor will cut or mow, or suffer to

PRECEDENTS

be cut or mowed, any of the grafs arising from the cloven eaves, or other grafs seeds which shall be sowed in any part of the said demised premises oftener or more than once, and only in the next ensuing season of the year for that purpose, after the ground sown with such grafs seeds shall be left out of tillage; AND ALSO shall not nor will cut or mow, or suffer to be cut or mown, the grafs of any part of the said premises, except the meadow-ground and such ground as is or shall be sown with grafs seeds as afore-said; nor till or break up for tillage any part of the meadow ground during the said term, nor cut or mow the grafs of the same oftener than once in any year during the said term: AND that he the said *John Edensee*, his executors, administrators, and assigns, shall not nor will cut any hedge or hedges of or belonging to the said hereby demised premises, but in the proper season of the year for that purpose, and not under seven years growth, and such hedges as adjoin to tillage-ground only when the ground adjoining thereto on one side at least shall be in tillage for the first crop after a new breach; and shall and will at the time leave sufficient growth in the hedges to cut, and upon and immediately after such cutting, shall and will cast, load, steep down, and new-make the hedges so cut on both sides, according to good husbandry; AND ALSO shall and will, from time to time and at all times during the said term, well and sufficiently repair, amend, and in good tenantable condition put, maintain, and keep all the hedges and the glafs of the windows, and also the gates, bars, stiles, and posts of or belonging to the said demised premises, (having timber to be cut into lexes, bars, or other form as shall be requisite and necessary by the assignment or delivery of the said *Nicholas Edensor*, his heirs or assigns,) and at the end, expiration, or other sooner determination of the said term the said hedges, glafs of the windows, gates, stiles, bars, and posts in good and sufficient repair shall and will leave and yield up; AND ALSO shall not nor will cut, top, or lop any tree or trees on the said premises hereby demised, but such trees as have been topped, and those only in the proper season of the year for that purpose, and not in an improper manner, nor under seven years growth; nor do or permit and suffer to be done or permitted any waste, spoil, or destruction in or upon the said demised premises, or any part thereof, during the said term, nor demise, let,
or

or let the said premises for any longer term than one year, and that to pasture only, with the consent of the said *Nicholas Edensor*, his heirs or assigns, for that purpose first had and obtained in writing; AND ALSO that he the said *John Edensee*, his executors, administrators, or assigns, shall not nor will carry off from the said premises any dung, soil, ashes, straw, or corn in the straw, which shall grow, arise, or be made thereon during the said term; AND ALSO, that he the said *John Edensee*, his executors, administrators, or assigns, shall and will, during the said term, pay and discharge the great and small tythes, and the house and window taxes, and do and perform the statute-labour to the highways, or pay the composition-money for the same, which shall become due or payable, &c. to be done and performed; AND ALSO shall and will permit and suffer the said *Nicholas Edensor*, his heirs or assigns, to cut spar-sticks, to be used in or upon the said demised premises, when and as often as need shall require during the said term hereby granted; AND ALSO that he the said *John Edensee*, his executors, administrators, or assigns, shall and will live and reside in the dwelling-house, part of the said demised premises, during the said term hereby granted; AND the said *Nicholas Edensor* doth hereby for himself, his heirs and assigns, covenant, promise, and agree to and with the said *John Edensee*, his executors, administrators, or assigns, in manner following; (that is to say,) that he the said *Nicholas Edensor*, his heirs and assigns, shall and will pay and discharge, or otherwise deduct and allow out of the rent hereby reserved, the land-tax, church-rates, and poor-rates which shall be paid by the said *John Edensee*, his executors, administrators, or assigns, for or in respect of the said demised premises during the said term; AND ALSO shall and will well and sufficiently repair, amend, and keep in good tenantable condition, maintain, and keep the said demised premises, as well in houses, walls, and coverings as in all other needful and necessary reparations whatsoever, when and as often as need shall require during the said term, and he and they shall be thereunto requested by the said *John Edensee*, his executors, administrators, or assigns, by a note in writing under his or their hand or hands (the hedges, gates, bars, stiles and posts, and the glass of the windows only excepted); AND ALSO shall and will find and provide timber to be cut into lexes, bars, or
such

P R E C E D E N T S

Covenant by
lessee to per-
mit lessor's
wife, in case
of his death,
to occupy
part of the
house.

such other form as shall be requisite and necessary for repairing the gates, bars, stiles, and posts belonging to the said demised premises: AND FURTHER, that it shall and may be lawful to and for the said *John Edensee*, his executors, administrators, and assigns, (duly paying the rent hereby reserved, and observing and performing all and every the covenants, conditions, and agreements herein contained on his and their parts to be performed,) from time to time and at all-times after the commencement and during the continuance of the said term, peaceably and quietly to have, hold, occupy, possess, and enjoy all and singular the said demised premises, with the appurtenances, (except as before excepted,) without the let, suit, trouble, molestation, or denial of him the said *Nicholas Edensor*, his heirs or assigns, or any person or persons lawfully claiming or to claim the said premises, or any part thereof, by, from, or under him or them, or any or either of them, and without the let, suit, or disturbance of any other person or persons whomsoever. AND it is hereby agreed by and between the parties to these presents, and the said *John Edensee* doth by these presents, for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree to and with the said *Nicholas Edensor*, his heirs, administrators, and assigns, in manner following; (that is to say,) that in case the said *Nicholas Edensor* shall die in the lifetime of his wife, and during the said term hereby granted, that then and in that case he the said *John Edensee*, his executors or administrators, shall or will allow and suffer her the said *Nicholas Edensor's* wife to have the separate use and occupation for herself, and servant or servants, and child or children, companion or companions, of two rooms, parcel of the dwelling-house to the said hereby demised premises called the *Parlour* and *Parlour-chamber*, and one other room or house called the *Little-house*, during so much of the said term hereby granted therein as shall be then to come and unexpired, and as the said *Nicholas Edensor's* wife shall think proper to inhabit and occupy the same as the place of her general habitation, without any payment to be made by the said *Nicholas Edensor*, or any allowance or deduction to be taken or claimed out of the rent hereby reserved from or on account of the use and occupation of the same rooms and little house. IN WIT-
NESS, &c.

Lease of Water Grist Mills in *Devonshire*, for a Term of 14 Years, if Lessor's Interest should so long continue, under Covenants.

THIS INDENTURE, made, &c. BETWEEN *Robert Edensor* of, &c. of the one part, and *Roger Edensee* of, &c. of the other part, WITNESSETH, that in consideration of the yearly rents, covenants, conditions, and agreements hereinafter reserved and contained, and which on the part and behalf of the said *Roger Edensor*, his executors, administrators, and assigns, are to be paid, done, and performed, he the said *Robert Edensee* HATH demised, granted, and to farm letten, and by these presents DOTH demise, grant, and to farm let unto the said *Roger Edensor*, his executors, administrators, and assigns, ALL those water grist mills, commonly called *Brent-mills*, with the cottage or dwelling-house, garden, orchard, and meadow thereunto belonging, with the appurtenances, situate, lying, and being within the parish and manor of *South Brent* in the said county of *Devon*, and now in the possession of him the said *Robert Edensor*, or his tenant, (EXCEPTING and always reserving unto the said *Robert Edensor*, his executors, administrators, and assigns, the liberty of ingress, egress, and regress to and for the said *Robert Edensor*, his executors, administrators, and assigns, and his and their agents, servants, labourers, and workmen, to view and see the repairs and management of the said hereby demised premises, or any part thereof, at all reasonable times,) TO HAVE AND TO HOLD the said water grist mills, cottage, or dwelling-house, garden, orchard, and meadow, and all and singular other the premises hereby demised or intended so to be, with the appurtenances, (except as aforesaid,) unto the said *Roger Edensee*, his executors, administrators, and assigns, from the 25th day of *March* now next ensuing, for and during and unto the end of the full term or time of fourteen years thence next and immediately ensuing and to be complete and ended, if the estate and interest of the said *Robert Edensor*, his executors, administrators, and assigns, of or in the said hereby demised premises shall so long continue, YIELDING AND PAYING therefore unto the said *Robert Edensor*, his executors, administrators, or assigns, yearly and every year during the term

Parties.

Consideration.

Demise.

Parcels.

Exception.

Habendum.

Reddendum.

Proviso for
re-entry in
default of
payment.

term hereby granted therein as aforesaid, the rent or sum of 18*l.* of lawful money of *Great Britain*, by even and equal portions, at or upon the four most usual feasts or days of payment in the year, (that is to say) the 24th day of *June*, the 29th day of *September*, the 25th day of *December*, and the 25th day of *March* in every year, the first payment thereof to be made on the 24th day of *June* now next ensuing: PROVIDED ALWAYS, and if it shall so happen that the said yearly rent or sum of 18*l.* shall be in arrear and unpaid, in the whole or in part, by the space of twenty-one days next over or after any of the said days or times when the same ought and is hereinbefore limited to be paid as aforesaid, and the same shall be then lawfully demanded, and then or at any time afterwards not paid, and at the time when such demand shall be made no sufficient distress or distresses can or may be found and peaceably and quietly taken on the said hereby demised premises, whereby the said rent so being behind, together with all the arrears thereof, (if any be,) may be fully levied, satisfied, and paid, then and in either of such cases it shall or may be lawful to and for the said *Robert Edensor*, his executors, administrators, and assigns, into and upon all and singular the said hereby demised premises, or into and upon any part or parts thereof in the name of the whole, to re-enter, and all and singular the same premises to have again, retain, repossess, and enjoy, as if these presents had not been made; these presents or any thing herein contained to the contrary thereof in anywise notwithstanding. AND the said *Roger Edensee* doth by these presents for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree to and with the said *Robert Edensee*, his executors, administrators, and assigns, in manner following; (that is to say,) that he the said *Roger Edensee*, his executors, administrators, or assigns, shall or will well and truly pay or cause to be paid unto the said *Robert Edensor*, his executors, administrators, or assigns, the said yearly rent or sum of 18*l.* by quarterly payments, in even and equal portions, at or upon the days or times hereinbefore limited for the payment of the same, without fraud or further delay, and according to the true intent and meaning of these presents: AND ALSO that he the said *Roger Edensee*, his executors, administrators, or assigns, shall or will, from time to time during the term hereby granted keep the orchard, part of the said hereby demised premises,
full

full planted with good thriving young apple-trees of the best fruit for cyder, the same being first full planted by the said *Robert Edensor*; his executors, administrators, or assigns; AND the said *Robert Edensor*, his executors, administrators, and assigns, having and taking the old or decayed trees in the room or stead of which such young trees shall be planted by him or them the said *Robert Edensor*, his executors, administrators, or assigns, and at the end or other sooner determination of the said term leave the same orchard so planted without any injury to be done in or by the said *Roger Edensee*, his executors, administrators, or assigns, or his or their cattle or servants, in the mean time to the young trees to be planted as aforesaid by the said *Roger Edensee* and *Robert Edensor*, or either of them, their or either of their executors; AND ALSO that he the said *Roger Edensee*, his executors, administrators, or assigns, shall not or will cut any hedge or hedges of or belonging to the said hereby demised premises, save only in the proper season of the year for that purpose, and when the wood of such hedge shall be of seven years growth; and that after every such cutting he the said *Roger Edensee*, his executors, administrators, or assigns, shall or will new-make, load, cast, and dike the hedge or hedges from which such wood shall be cut, in the part or parts from which the same wood shall be cut; AND ALSO that he the said *Roger Edensee*, his executors, administrators, or assigns, shall not nor will remove or carry from off the said hereby demised premises, or any part thereof, any dung, mud, compost, soil, manure, or ashes that shall arise, grow, be made, or be deposited thereon during the last two of the fourteen years of the said term or time hereby granted, but shall or will either consume or spend the same in a husband-like manner upon the said hereby demised premises, or some part thereof, or otherwise leave the same dung, mud, compost, soil, manure, and ashes upon the said hereby demised premises, or some part thereof, at the end of the said term, for the benefit of the said *Robert Edensor*, his executors, administrators, or assigns: AND that he the said *Roger Edensee*, his executors, administrators, or assigns, shall or will pay, bear, and discharge all rates, taxes, and customary rent, inclusive of the land-tax, and take, do, perform, and pay all parish apprentices, parish offices, statute labour to the highways, or composition in lieu thereof, which, from time to time during the term hereby granted,

granted, shall be to be paid, borne, discharged, done, taken, and performed for or in respect of the said hereby demised premises, or any part thereof; AND shall and will repair and keep in repair all the houses, mills, mill-works, buildings, walls, linkay-mill, leat-wears, hedges, gates, posts, and fences of and belonging to parcel of the said hereby demised premises, in, by, and with all and all manner of needful and necessary or proper reparations or amendments whatsoever, when and as often as the same shall be wanting; and rebuild such part of the houses, out-houses, linkays, buildings, and walls as may fall down from time to time during the term hereby granted; AND at the end or other sooner determination of the said term hereby granted shall have and yield up the same houses, mills, mill-works, buildings, walls, linkay-mill, leat-wear, hedges, gates, posts, and fences in as good condition and repair as the same are at this time; AND ALSO at the end or other sooner determination of the said term hereby granted shall and will leave and yield up the bunting-mill, part of the said hereby demised premises, with two good sound cloths, one of the value of 1*l.* 1*s.* and the other of the value of 14*s.*; AND that he the said *Roger Edenssee*, his executors, administrators, or assigns, shall not or will do, commit, permit, omit, or suffer any act, matter, or thing whatsoever in the improving or managing the said hereby demised premises, or any part thereof, whereby any loss, damage, or prejudice by reason of forfeiture of estate, breach of covenant, or otherwise, may arise, happen, or come to the said *Robert Edensor*, his executors, administrators, or assigns. AND the said *Robert Edensor* doth by these presents, for himself, his heirs, executors, administrators, or assigns, covenant, promise, grant, and agree to and with the said *Roger Edenssee*, his executors, administrators, and assigns, in manner following; (that is to say,) that he the said *Robert Edensor*, his executors, administrators, or assigns, shall or will, from time to time and at all times during the term hereby granted, well and truly pay or cause to be paid the heriots, fines, and amerciaments that from time to time during the term hereby granted shall become due or payable for or in respect of the said hereby demised premises, or any part thereof, when and as the same shall become due and payable, or otherwise on request well and sufficiently save harmless and keep indemnified the said *Roger Edenssee*, his heirs,

heirs, executors, administrators, and assigns, and every of them, and his and their lands and tenements, goods and chattels, of and from the same, of and from all costs, charges, damages, and expences to be paid, done, sustained and incurred by the said *Roger Edensee*, his executors, administrators, or assigns, by reason or on account of the same: AND LASTLY, that he said *Roger Edensee*, his executors, administrators, and assigns, well and truly observing, paying, performing, fulfilling, and keeping all and singular the covenants, grants, articles, payments, and agreements contained in these presents to be paid, done, observed, performed, fulfilled, and kept by or on the part or behalf of him the said *Roger Edensee*, his executors, administrators, or assigns, shall or may, during the said term of fourteen years hereby granted therein determinable as aforesaid, peaceable and quietly have, hold, use, occupy, and enjoy the said hereby demised premises, with the appurtenances, without any let, suit, trouble, eviction, ejection, expulsion, interruption, hindrance, or denial whatsoever of, from, or by him the said *Robert Edensor*, his executors, administrators, or assigns, or any other person or persons whomsoever. IN WITNESS, &c.

Lease of a Farm House, &c. in *Devon*, for 14 Years, determinable at the End of 7 Years, on a Notice from either of the Parties.

THIS INDENTURE, made, &c. BETWEEN *Thomas Edensor* of, &c. of the one part, and *Samuel Edensee* of, &c. of the other part, WITNESSETH, that the said *Thomas Edensor*, in consideration of the yearly rent hereinafter reserved, and of the covenants, considerations, and agreements hereinafter mentioned, expressed, and contained, and which on the part of the said *Samuel Edensee*, his executors, administrators, and assigns, are to be kept, done, and performed, HATH demised, leased, granted, and to farm letten, and by these presents BOTH demise, lease, grant, and to farm let unto the said *Samuel Edensee*, ALL that messuage and tenement, with the appurtenances, commonly called or known by the name of *Borough*, situate in *Torbryan* aforesaid, now in the possession of

Parties.

Consideration.

Demise.

Parcels.

Exception.

of the said *Samuel Edensee*, his undertenant or undertenants, containing by estimation 54 acres, (be the same more or less,) together with all ways, paths, passages, waters, watercourses, profits, and advantages whatsoever to the said premises, or any part thereof, belonging or in anywise appertaining, (**EXCEPTING** and always reserving out of this present demise and grant unto the said *Thomas Edensor*, his heirs, and assigns, all manner of timber and other trees and saplings likely to become trees of what kind soever now standing, growing, or being, or which at any time and from time to time hereafter shall or may stand, grow, or be planted in or upon the said premises, or any part thereof, with full and free liberty, licence, and authority to fell, cut down, root up, convert, draw, take, and carry away the same with horses or any manner of carriages or other conveyances, at all meet and convenient times during the term hereinafter mentioned, and to make saw-pits for converting such timber trees on the premises; **AND ALSO** the right, interest, and privilege of planting trees of every or any sort on any part of the said hereby demised premises in or within three feet of the troughs or ditches of the respective hedges of the same premises; **AND ALSO** the liberty of ingress, egress, and regress into, from, and upon the said hereby demised premises, or any part thereof, to view and see the defects, repairs, and management of the said hereby demised premises, or any part thereof,) **TO HAVE AND TO HOLD** the said messuage and tenement hereby demised or intended

Habendum.

so to be, with the appurtenances, (except as before excepted,) unto the said *Samuel Edensee*, his executors, administrators, and assigns, from the 25th day of *March* last past, for and during the full time and term of 14 years thence next ensuing fully to be complete and ended,

Reddendum.

YIELDING AND PAYING therefore yearly and every year during the said term, unto the said *Thomas Edensor*, his heirs and assigns, the rent or sum of 35*l.* of lawful money of *Great Britain*, free and clear of and from all rates, taxes, tythes, charges, impositions, and outgoing whatsoever, inclusive of the land-tax, (except as hereinafter is excepted,) at or upon the four most usual feasts or days of payment of rent in the year, (that is to say) the 25th day of *March*, the 24th day of *June*, the 29th day of *September*, and the 25th day of *December*, by quarterly payments, in even and equal portions, the first payment thereof to be made

made on such of the said days as shall happen next after the commencement of the said term; AND the said *Samuel Edensee* DOth by these presents, for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree to and with the said *Thomas Edensor*, his heirs and assigns, in manner following; (that is to say,) that the said *Samuel Edensee*, his executors, administrators, or assigns, shall or will well and truly pay or cause to be paid unto the said *Thomas Edensor*, his heirs and assigns, during the said term, the said yearly rent or sum of 35*l.* at or upon the days or times hereinbefore limited and appointed for the payment of the same, in manner and form aforesaid, according to the true intent and meaning of these presents; AND To repair; ALSO that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall or will from time to time, and at all times during the said term, repair and keep, in good repair all the thatch, floors, doors, gates, stiles, posts, hedges, and fences belonging to the said demised premises, and all other repairs whatsoever (except as hereinafter excepted); AND ALSO from time to time, and at all times during the said term, repair and keep in good repair the apple-pound, parcel of the said hereby demised premises, and the wring and all other utensils thereunto belonging, and also the glass and lead of the windows, and be at the expence of felling and converting timber for the purpose of such repairs, after trees fit for the purpose shall have been assigned to him or them by the said *Thomas Edensor*, his heirs or assigns; AND ALSO keep the orchards (except the higher to keep the orchards well planted; one) on the premises well planted during the said term with good young apple-trees, such as the said *Thomas Edensor*, his heirs and assigns, shall approve of, and dress the same with the usual quantity of dung or ashes, having the dead and blown-down trees in lieu thereof; AND ALSO to pay taxes; that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall or will from time to time, and at all times during the said term, pay, bear, and discharge all rates, taxes, tythes, and charges whatsoever, inclusive of the land-tax, which during the said term shall become due and payable for or in respect of the said hereby demised premises, and thereof and therefrom save harmless and keep indemnified the said *Thomas Edensor*, his heirs, executors, administrators, and assigns, and every of them; AND ALSO that he the said *Samuel Edensee*, his executors, not to break up for tillage any part administrators, or assigns, shall not or will till or break

T

up

more than
once in 7
years;
to dress the
land so broke
up with a
certain
quantity of
lime or
dung;

to take only
three crops
of corn or
grain in any
7 years;

such crops
to be taken
successively,
and only one
of wheat, and
that not the
last;

to cut the
grass arising
from the
seeds sown
by leffee
only once;

not to cut
the wood
growing on
the hedges
around the
arable land,
but when
the land
shall be in
tillage for
the first crop;
and after
the cutting
to stoop the
hedges;

up to or for tillage all or any part of the said hereby demised premises more than once in any seven years of the term hereby granted therein; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall or will bring into or lay upon every acre of the said hereby demised premises that shall be ploughed up or put to tillage in each seven years of the said term, and so in proportion for every less quantity than an acre, twelve hogheads of good well-burnt lime, or eight score seams or horse-loads of good black dung, and there mix and spread the same after the manner of good husbandry; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall or will, in each course of tillage, bring or carry into and upon the said hereby demised premises, and there spend and spread abroad, at least six hogheads of such lime, or four score seams or horse-loads of such dung, in part of the said first-mentioned quantities of lime or dung, before the first crop of each course of tillage shall be taken; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall not or will take from off the said hereby demised premises, or any part thereof, more than three crops of corn or grain in any seven years of the said term; AND that such crops shall be taken severally in successive years, and one after the other, and that one of such crops only, and that not the last, shall be of wheat, and the other two crops barley or oats, or one crop of the one part and the other crop of the other part; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall not or will cut or mow for hay the grass that shall arise from any grass seeds which shall be sown by him or them more than once after such seeds shall have been sown, and that not for seed, and then only in the next proper season after sowing such grass seeds; AND that he the said *Samuel Edensee*, his executors or administrators, shall not or will cut any wood growing or to grow on the hedges around the arable ground of the said hereby demised premises, at any other time or times but when the fields fenced by such hedges shall be in tillage for their first crop of each course of tillage; AND that he the said *Samuel Edensee*, his executors or administrators, shall or will, upon or within one calendar month after cutting the wood of any hedge, parcel of the said hereby demised premises, lade and stoop the hedges from which such wood shall be cut on both sides,

sides, according to the best rules of good husbandry; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall not or will, at any time or times during the said term, pare, top, or lop any tree or trees on the said hereby demised premises, but such as have been usually pared, topped, or lopped; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall not or will, at any time or times during the said term, or after the expiration thereof, remove or carry off, or cause, permit, or suffer to be removed or carried from off the said hereby demised premises, any straw, corn in straw, muck, dung, ashes, soil, compost, or manure that shall arise, grow, or be made on the said premises, or any part thereof; nor shall nor will let or set the said premises, or any part thereof, without the leave or licence of the said *Thomas Edensor*, his heirs or assigns, under his or their hand or hands first had and obtained; AND that he the said *Samuel Edensee*, his executors, administrators, or assigns, shall not or will do or commit, or suffer to be done or committed, on the said hereby demised premises, any ill management or bad husbandry whatsoever, but that he the said *Samuel Edensee*, his executors, administrators, and assigns, shall and will from time to time, and at all times during the said term, dress, manure, improve, and manage the said hereby demised premises, and every part thereof, according to their several qualities, agreeable to the best rules of good husbandry, and according to the usage of the country; and, on the end or other sooner determination of the said term, leave and yield up the said hereby demised premises so repaired and amended, manured, improved, and managed, into the hands of the said *Thomas Edensor*, his heirs or assigns, without any notice for that purpose; AND the said *Thomas Edensor*, for himself, his heirs, executors, administrators, and assigns, doth by these presents covenant and agree with the said *Samuel Edensee*, his executors, administrators, and assigns, that he the said *Thomas Edensor*, his heirs or assigns, shall or will from time to time, and at all times during the said term, repair and keep in repair the walls, roofs, and coverings of all such parts of the dwelling-house, barn, pound-house, and other buildings of the said demised premises as are covered with slate; AND that he the said *Thomas Edensor*, his heirs or assigns, when thereunto requested, and within a reasonable time after every request,

not to lop any trees but such as have been usually lopped;

not to carry off any dung, &c.

or let the premises;

or mismanage the estate;

to yield up the estate in good condition at the determination of the lease, without any notice.

Covenant by lessor to repair the walls, &c. of the house, &c.

and to assign trees for the repair of the floors, &c.;

for quiet en-
joyment.

Clause for
re-entry in
case of non-
payment of
rent,

or waste or
destruction.

Agreement
to determine
the lease at
the end of
7 years, on
giving no-
tice.

shall or will assign or set out to the said *Samuel Edensee*, his executors, administrators, or assigns, such tree or trees growing on the said hereby demised premises as shall be wanted for the repairs of the floors, doors, posts, stiles, or gates of the same premises, or the apple-pound, parcel of the same; AND that it shall or may be lawful to and for the said *Samuel Edensee*, his executors, administrators, and assigns, by and under the due payment of the said rent, and the observance and performance of the said covenants and agreements to be observed and kept on his and their parts and behalfs, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said messuage and tenement hereby demised or intended so to be, without any let, suit, or interruption of, from, or by him the said *Thomas Edensor*, his heirs or assigns, or any other person or persons whomsoever: AND if it shall happen that the said yearly rent of 35 *l.*, or any part thereof, shall be behind and unpaid by the space of twenty days next after either of the said days of payment on which the same ought to be paid as aforesaid, and the same shall be lawfully demanded, and not paid, and no sufficient distress in or upon the said premises, or some part thereof, by all that time can or may be found, whereby the said rent so being behind, with the arrears thereof (if any), can or may be levied, satisfied, and paid, or if the said *Samuel Edensee*, his executors, administrators, or assigns, shall at any time or times during the said term hereby granted, do or commit, or wittingly or willingly suffer to be done or committed, any manner of waste, spoil, or destruction in or upon the said premises, or any part thereof, to the value of 20 *s.* or above, in any one year of the said term, and shall not sufficiently repair and amend again or make satisfaction for the same within three months next after notice or warning thereof unto him or them to be given in that behalf, that then and thenceforth, for either of the cases aforesaid, it shall and may be lawful to and for the said *Thomas Edensor*, his heirs, executors, administrators, or assigns, into and upon all and singular the said demised premises, with the appurtenances, to re-enter, and the same to have again, repossess, and enjoy as in his and their first and former estate; these presents, or any thing herein contained to the contrary in anywise notwithstanding. AND it is hereby agreed by and between the parties to these presents, and they do severally grant, each of them unto the other of them,

them, that in case a notice in writing shall, on or before the 25th day of *March* in the year 1797, be given by the said *Thomas Edensor*, his heirs or assigns, to the said *Samuel Edensee*, his executors, administrators, or assigns, or by the said *Samuel Edensee*, his executors, administrators, or assigns, to the said *Thomas Edensor*, his heirs or assigns, for determining the estate of the said *Samuel Edensee*, his executors, administrators, or assigns, of or in the said demised premises, at the end of the first seven years of the said term, that then and in that case, and upon and immediately after the expiration of the first seven years of the said term or time of fourteen years, the term, estate, and interest of the said *Samuel Edensee*, his executors, administrators, and assigns, of and in the said hereby demised premises shall cease and become absolutely void; and the said *Thomas Edensor* and *Samuel Edensee* shall thenceforth be severally and respectively discharged of and from any further or other observance or performance of the several respective covenants hereinbefore entered into by them the said *Thomas Edensor* and *Samuel Edensee* respectively:

AND it is hereby agreed by and between the parties to these presents, and the said *Samuel Edensee* doth hereby grant, that it shall or may be lawful to and for the said *Thomas Edensor*, his heirs and assigns, in the proper seasons for the last twelve months of the term hereby agreed, either in the 7th or 14th year of the said term of fourteen years, as the case shall require, to make breaches for wheat in or upon any of such acres of the arable ground, part of the said hereby demised premises, as shall be then fallow and out of tillage, and as shall not have been sown with clover or caver-grass feeds in the preceding year, and break up and prepare the arishes which shall be in a course of tillage, and sow such arish ground when broken up, and the ground to be so broken up for wheat, with seeds, and hold the part or parts of the said hereby demised premises which shall be so sown, from the respective times at which the same shall be sown, during the then residue of the said term. IN WITNESS, &c.

Lessor to be permitted to make breaches for wheat in the proper seasons in the twelvemonth preceding the determination of the lease.

Lease by five Persons, two of whom are Trustees of a Moiety of the Estate for one of the others, of a Plantation in *St. John, Newfoundland*.

Parties.

Consideration.

Parcels.

Habendum.

Reddendum
for one
moiety to
the trustees,

THIS INDENTURE, of three parts, made, &c. BETWEEN *M. S.* of, &c. *R. H.* of, &c. and *G. W.* of, &c. of the first part, *W. S. C.* of, &c. and *E.* his wife of the second part, and *W. B.* of *Ainsmore* in the parish of *St. Nicholas* in the said county, merchant, of the third part, WITNESSETH, that for and in consideration of the yearly rents, reservations, covenants, and agreements hereinafter reserved and contained, and for divers other good causes and conditions, they the said *M. S.*, *R. H.*, *G. W.*, *W. S. C.*, and *E.* his wife, according to their several and respective interests, HAVE, and each and every of them HATH granted, demised, leased, and to farm letten, and by these presents do, and each of them BOTH grant, demise, lease, and to farm let unto the said *W. B.*, his executors, administrators, and assigns, ALL that plantation and premises situate, lying, and being in *Maggaty Cove* within the island of *Newfoundland*, in parts beyond the seas, and late part of the lands of *John S. Esq.* deceased, lately in the possession or occupation of *Lawrence W.* and others, at an yearly rent thereof, and now in the occupation of the said *W. B.*, or his under-tenants, together with all houses, out-houses, edifices, buildings, wharfs, stages to the said plantation and premises hereby demised, or intended so to be, or any part or parcel thereof belonging or in anywise appertaining, or therewith or with any part thereof held, used, occupied, possessed, and enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof, TO HAVE AND TO HOLD the said plantation, wharfs, stages, and all and singular other the premises hereby demised or mentioned, or intended so to be, and every part and parcel of the same, with their and every of their appurtenances, unto the said *W. B.*, his executors, administrators, and assigns, from the 25th day of *December* now last past, for and during the full term and time of twenty-one years thence next ensuing and fully to be complete and ended, subject to the powers or provisos hereinafter contained, YIELDING AND PAYING therefore yearly and every year during the first seven years of the said term unto the said *R. H.* and *G. W.*, or the person or persons to whom the

imme-

immediate remainder or remainders of the moiety of the said hereby demised premises held in trust for the said *M. S.* shall from time to time belong, for the said moiety of the said premises, the clear annual rent of 4*l.* of lawful money of *Great Britain*; AND to the said *W. S. C.* and *E.* his wife, and the person or persons to whom the immediate reversion or remainder of the moiety of the said hereby demised premises held by the said *W. S. C.* and *E.* his wife shall from time to time belong, for the said last-mentioned moiety of the said premises, the sum of 4*l.* of like lawful money; AND from and immediately after the determination of the first seven years of the said term, and thenceforth during the residue of the same term, unto the said *R. H.* and *G. W.*; and the person or persons to whom the immediate reversion or remainder of the moiety of the said hereby demised premises held in trust for the said *M. S.* shall from time to time belong, the rent or sum of 10*l.* of like lawful money; AND to the said *W. S. C.* and *E.* his wife, and to the person or persons to whom the immediate reversion or remainder of the moiety of the said hereby demised premises held by the said *W. S. C.* and *E.* his wife shall from time to time belong, for the said last-mentioned moiety of the same, the rent or sum of 10*l.* of like lawful money; and make the payment of the said several rents of 4*l.* and 4*l.*, and 10*l.* and 10*l.* a-year respectively, on the 24th day of *December* in every year when and as the same respectively shall become due, at the dwelling-house of the said *W. S. C.* in *A.* aforesaid; the first payment of the said rents of 4*l.* and 4*l.* a-year to be made on the 24th day of *December* next ensuing the day of the date of these presents, and the first payment of the said rents of 10*l.* and 10*l.* a-year to be made on the 24th day of *December* in the year 1799. AND the said *W. B.* doth by these presents, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said *M. S.*, *R. H.*, *G. W.*, *W. S. C.*, and *E.* his wife, their heirs and assigns, in manner following, *viz.* that he the said *W. B.*, his executors, administrators, and assigns, or some of them, shall and will well and truly pay or cause to be paid unto the said *R. H.*, *G. W.*, *W. S. C.*, and *E.* his wife, their heirs and assigns, or to such other person or persons as shall be entitled to the freehold reversion and remainder of the said premises as aforesaid, the said several and respective rents or sums of 4*l.* and 4*l.*,

for the first
7 years, 4*l.*
per annum;

to the hus-
band and
wife, the
other lessors,
the like rent
for the other
moiety.

Increased
rent to the
trustees for
the remain-
der of the
term;

the like to
the husband
and wife.

Covenant
for payment
of rent;

to rebuild the
parts lately
burnt, and
to improve
the planta-
tion, so that
at the end
of the term
it may be of
the full va-
lue of 20l.
per annum;

to repair;

casualties by
fire and ene-
mies except-
ed.

Proviso for
re-entry.

10l. and 10l., at the days and times, and in the proportions, and at the place before-mentioned and appointed for the payment of the same, without any deduction or abatement whatsoever; AND ALSO that he the said *W. B.*, his executors, administrators, or assigns, shall or will at his or their own proper costs and charges, within two years from the day of the date of these presents, rebuild and repair the said plantation, and the out-houses, edifices, buildings, wharfs, and stages belonging thereto, in the part or parts lately consumed by fire, and put the same plantation and premises in the same and the like or better state of repair and condition than the same plantation and premises were before they were burnt down, and so that the same plantation and premises may, at the expiration or other sooner determination of the said term of twenty-one years, be of the full clear yearly value of 20l., to be rated according to the value and rent of plantations in *Newfoundland* at this time; AND ALSO that he the said *W. B.*, his executors, administrators, and assigns, shall and will at his and their own proper costs and charges, from time to time, and at all times hereafter during the continuance of the said term, well and sufficiently repair, uphold, amend, maintain, and keep the storehouses, warehouses, fishing-rooms, erections, buildings now being, and which at any time, and from time to time during the said term, shall or may be upon the said plantation and premises hereby demised or mentioned, or intended so to be, in, by, and with all and all manner of necessary reparations and amendments whatsoever, when and where and as often as need or occasion shall be or require, (casualties by enemies or fire which may take down, destroy, injure, or burn down the same premises, or any part thereof, always excepted and foreprized,) and so leave the same at the end or other sooner determination of the said term: PROVIDED ALWAYS nevertheless, and it is the true intent and meaning of these presents, that if it shall happen that the said yearly rents or sums of 4l. and 4l., and 10l. and 10l., or any or either of them, or any part of them, any or either of them shall be behind or unpaid by the space of thirty days next after the day or time whereon the same ought to be paid as aforesaid, and the same shall, on the expiration of the said thirty days, or at any time afterwards, be lawfully demanded, and not paid at the time of such demand, or in case the covenants or agree-
ments

ments hereinbefore contained shall not be well and truly performed and kept, then in either of the said cases it shall and may be lawful to and for the said *M. S.*, *R. H.*, *G. W.*, *W. S. C.*, and *E.* his wife, their heirs and assigns, or such other person or persons who for the time being shall be entitled to the freehold reversion or remainder of the said premises respectively as aforesaid, into and upon the said demised premises, or into or upon any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as if these presents had not been made; these presents, or any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. AND the said *M. S.*, *R. H.*, *G. W.*, for themselves respectively, and the said *W. S. C.* for himself and the said *E.* his wife, do, and each of them both severally and respectively, and not jointly, or the one for the other or others of them, and for their several and respective and not joint heirs, executors, and administrators, covenant, promise, and agree to and with the said *W. B.*, his executors, administrators, and assigns, that under and subject to the payment of the rent hereby reserved, and performance of the covenants hereinbefore contained, it shall and may be lawful to and for the said *W. B.*, his executors, administrators, and assigns, from time to time, and at all times hereafter during the continuance of the said term, peaceably and quietly to have, hold, occupy, possess, and enjoy the said plantation and premises hereby demised, and every part thereof, with the appurtenances, without the let, suit, trouble, hindrance, molestation, interruption, or denial of them the said *M. S.*, *R. H.*, *G. W.*, and *W. S. C.*, and *E.* his wife, their heirs or assigns, or any other person or persons claiming or to claim by, from, under, or in trust for him, them, or any of them in anywise: PROVIDED, LASTLY, and it is hereby declared and agreed by and between the said parties hereto, that in case the said *W. B.*, his executors, administrators, and assigns, shall be minded and desirous to quit and deliver up the possession of the said premises at the end of the first seven or fourteen years of the said term hereby granted, and shall give to the said *M. S.*, *R. H.*, *G. W.*, *W. S. C.*, and *E.* his wife, their heirs or assigns, or leave at his or their usual dwelling-house or place of abode, twelve calendar months previous notice, in writing, of such his or their intention, that then and in such case, and from and immediately after the expiration of such seven or fourteen

Covenant by
lessors for
quiet enjoy-
ment.

Proviso for
lessee to quit
at the end of
the first 7 or
14 years, on
12 months
notice.

fourteen years, according to such previous notice, and the time when the same shall be given or left as aforesaid, the remainder and estate hereby granted of or in the said hereby demised premises shall cease and determine, and in that case, and from and after the determination of the said term, the said *W. B.*, his executors, administrators, and assigns, shall be discharged of and from any further or other observance or performance of the covenants hereinbefore contained, and to be observed, performed, and kept by or on the part and behalf of the said *W. B.*, his executors, administrators, and assigns. IN WITNESS, &c.

Lease of a Farm in the County of *Devon*, for 3 Years.

Parties.

Consideration.

Demise.

Parcels.

THIS INDENTURE, made, &c. BETWEEN *Thomas Edensor* of, &c. (eldest son and heir at law, and also the devisee in fee named in the will of *John Edensor*, late of, &c. aforesaid, merchant, his father, deceased) of the one part, and *Edward Edensee* of, &c. in the said county, yeoman, of the other part, WITNESSETH, that the said *Robert Edensor* the son, in consideration of the yearly rent hereby reserved, payable quarterly during the term hereby granted, and of the covenants hereinafter entered into by the said *Edward Edensee*, and the conditions in these presents inserted and contained, HATH demised, leased, granted, and to farm letten, and by these presents BOTH demise, lease, grant, and to farm let unto the said *Edward Edensee*, ALL that tenement and those fields, closes, and parcels of land, meadow, pasture, and orchard, situate at within the parish of aforesaid, now in the possession of the said *Edward Edensee*, as tenant to the said *Thomas Edensor*; AND ALSO all those messuages and dwelling-houses belonging to the said *Thomas Edensor* the son, situate within the village of aforesaid; AND ALSO all that lime-kiln, situate, lying, and being on the lower side of the turnpike-road leading from aforesaid towards ; AND ALSO all that quarry adjoining thereto, called *Lobb Quarry*; all which premises are now in the possession of the said *Edward Edensee* or his under-tenants; TOGETHER WITH all houses, edifices, buildings, barns, stables, courts, curtilages, quarries, lime-rocks, ways, paths, passages, waters, watercourses, easements, profits, commodities, and advantages whatsoever to the said

said messuages, tenements, fields, closes, parcels of land, meadow, and pasture, lime-kiln, quarry, and premises respectively belonging or in anywise appertaining, and now occupied, held, or otherwise enjoyed by the said *Edward Edensee* as part or parcel thereof, (EXCEPTING and always reserving out of this present demise unto the said *Thomas Edensor* the son, his heirs and assigns, all timber and other trees, and sapplings likely to become trees, of what nature or kind soever, now standing, growing, or being, or which hereafter shall or may grow or be in or upon the said hereby demised premises, or any part thereof, during the term hereby granted, except pollards and such trees as have been usually topped, lopped, pared, and pruned, with liberty of ingress, egress, and regress to and for the said *Thomas Edensor*, his heirs and assigns, and his and their servants, labourers, and workmen, to view and see the defects, repairs, and management of the said hereby demised premises, and to fell, cut down, work, and root up the said trees and sapplings, and to carry away the same with any manner of carriages or other conveyances, doing thereby no wilful waste; AND ALSO EXCEPTING unto the said *Thomas Edensor*, his heirs and assigns, the liberty, easement, and authority, either by himself or themselves, or his or their servants, workmen, or labourers, of planting trees on any part of the said hereby demised premises, on both or either of the sides of the hedges of the same, and of ingress, egress, and regress to and for the said *Thomas Edensor* to fence the said trees, and to view and see the defects, repairs, and management of the same premises, or any part thereof,) TO HAVE AND TO HOLD the said messuages, tenements, fields, closes, parcels of land, meadow and pasture, lime-kiln, quarry, and premises hereby demised, or intended so to be, with the appurtenances, (except as aforesaid,) unto the said *Edward Edensee*, his executors, administrators, and assigns, from the 26th day of *March* next ensuing the date of these presents, for and during and to the end of the full term or time of three years thence next and immediately ensuing, and to be complete and ended, YIELDING AND PAYING therefore yearly and every year unto the said *Thomas Edensor*, his heirs or assigns, from and after the commencement of the said term and thenceforth during the same, the rent or sum of

l. of lawful money of Great Britain, by even and equal quarterly payments, at or upon the 25th day of March,

Exception
of trees;and liberty
of planting
trees.

Habeendum,

Reddendum,

Covenant by
lessee for
payment of
rent ;

to supply
spear-sticks
for thatch-
ing the
buildings ;

not to break
up the pas-
ture-
ground ;

nor any part
of the ara-
ble more
than once ;

nor to sow
with any
roots or
pulse, ex-
cept turnip-
feed and
grain for
corn ;

nor take off
more than
three crops
of grain and

March, the 24th day of *June*, the 29th day of *September*, and the 25th day of *December*, clear of any deductions for any rates, taxes, or other impositions ; the first payment thereof to be made on the 24th day of *June* next ensuing the commencement of the said term : AND the said *Edward Edensee* doth by these presents, for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree to and with the said *Thomas Edensor*, his heirs and assigns, in manner following ; (that is to say,) that he the said *Edward Edensor* shall or will well and truly pay or cause to be paid unto the said *Thomas Edensor*, his heirs or assigns, the said yearly rent hereinbefore reserved, on the days and times hereinbefore limited for the payment of the same, according to the reservation hereby made thereof, and the tenor, true intent, and meaning of these presents ; AND that he the said *Edward Edensee*, his executors, administrators, and assigns, shall and will, upon reasonable notice requiring the same to be given by the said *Thomas Edensor*, his heirs or assigns, find and provide sufficient spear-sticks, to be used in laying down the thatch to be made in or upon the houses, out-houses, edifices, and buildings of and belonging to the said hereby demised premises which are now thatched, when and so often as there shall be occasion to thatch the same during the term hereby granted ; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will, at any time during the term hereby granted, till, or break up to or for tillage, all or any part of the meadow or pasture ground, parcel of the said hereby demised premises ; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will till, or break up to or for any tillage, any part of the arable ground, parcel of the said hereby demised premises, more than once during the said term hereby granted, and only such parts of the same as have not been tilled within three years from the day of the date of these presents ; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will sow the part or parts of the said hereby demised premises which he or they shall till, or break up to or for tillage, during the term hereby granted, with any roots or pulse whatsoever, except turnip-feed and grain for corn, at any time during the term ; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will, as to the part of the said hereby

by

by demised premises which he or they shall till, or break up to or for tillage, during the said term hereby granted, take from off any part of the same more than three crops of corn or grain, and one crop of turnips, during the term hereby granted; and as to that part of the said hereby demised premises which is at this time in a course of tillage, take from off the same more than one crop where two crops have been taken since they were last broken up for tillage, or more than two crops where but one crop has been taken since they were last broken up for tillage; AND that such crops of corn or grain shall be taken in successive years, and that one of them, where there are to be three, and that not the last, shall be of wheat, and the other two of barley or oats, or one of the one and the other of the other; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall or will, at his or their proper costs and charges, carry or cause to be carried into and upon every and each acre, and so in proportion for every less quantity than an acre of the said hereby demised premises which he and they respectively shall till, or break up to or for tillage, during the said term hereby granted, or in the fall of the present year, or in the spring of next year, for a first crop, and before the same shall be sown, in order to the taking the first crop, ten hogsheads of good well-burnt stone lime, or 160 seams of good black rotten dung in lieu thereof, which seams shall be such quantity as are usually carried in the country, and there lay, leave, spread, cast abroad, and manage the same dressing according to the best rules of good husbandry; AND that with the seeds of corn or grain which shall be sown by the said *Edward Edensee*, his executors, administrators, or assigns, in order to the taking of the third or last corn or grain as are to be taken during the term hereby granted, and also with the seeds of corn or grain which shall be sown by the said *Edward Edensee*, his executors, administrators, or assigns, in order to the taking the last of such crops of corn or grain as he or they shall take from or off the part or parts of the said hereby demised premises which are now in a course of tillage, he the said *Edward Edensee*, his executors, administrators, or assigns, shall or will sow or cause to be sown, in or upon that part of the said hereby demised premises in which such seeds of corn or grain shall from time to time be sown, at least twelve pounds of good new clover, and

one of turnips from the part which shall be broken up;

nor more than one of that part which is in tillage where two crops have been taken, nor more than two where one has been taken;

to dress the tillage land with lime or dung;

to sow clover and trefoil with the last of the three crops;

and not fret
or mow
more than
once the
grafs which
shall arise
therefrom,

or suffer it
to be eaten
too close;

or mow the
grafs of the
pasture-
ground
without
lessor's con-
sent;

or cut the
trees and
saplings;

or cut the
wood of the
hedges more
than once
during the
term, and
that not in
the last year,
or anywhere
where it has
been cut
within six
years;

to new-
make the
hedges once

and one peck of the best new caver or trefoil grafs seeds an acre, and so in proportion for every less quantity than one acre, and brush, harrow in, and manage the same seeds according to the best rules of good husbandry; AND ALSO, that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will, after any course of tillage, strip, pluck, or fret the grafs which shall arise or be produced by or from such grafs seeds, or mow the same more than once after the seeds from which the grafs shall arise shall have been sown, and then only in the next year after the seeds shall have been sown; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will suffer the grafs arising from such grafs seeds to be injured by being eaten too close; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not mow the grafs of the pasture ground at any time during the term, without the consent of the said *Thomas Edensor* the son, his heirs or assigns, thereunto in writing under his or their hand or hands first had and obtained; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will cut, hew, fell, take down, or root up, or cause, procure, or wittingly or willingly permit or suffer to be cut, hewn, felled, taken down, or rooted up, any of the trees and saplings now being, or which at any time, and from time to time hereafter during the term hereby granted, shall stand, grow, or be planted in or upon the said hereby demised premises, or any part thereof; nor top, lop, poll, pare, or prune any trees of oak, ash, elm, or other wood, but such as have been respectively and usually topped, lopped, polled, pared, and pruned, and those but once during the said term, and then only in the first or second year of the term hereby granted, and in seasonable times of the year for the doing thereof; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will cut the wood of the hedges of the said hereby demised premises in any one part of the same hedges, or the furze or underwood now growing, or which at any time and from time to time hereafter shall grow or be in the same premises, more than once during the term hereby granted, and none in the last year thereof, or in any part or place from which any wood, furze, or growth shall have been cut within the six preceding years; AND that he the said *Edward Edensee*, his executors, administrators, or assigns,

assigns, shall or will make anew all and singular the hedges of and belonging to the hereby demised premises, or put parts of the same respectively as shall require to be new-made, once before the end of the term hereby granted; and that upon and after new-making or cutting each respective hedge of the said hereby demised premises, or any part thereof, there shall be left to remain on either side of the same hedges, or such parts thereof as shall be so cut, the wood which shall be most proper for steepers; that he the said *Edward Edensee*, his executors, administrators, or assigns, shall or will well and sufficiently lay down such wood for steepers, and dike, cast, load, bank up, fence, and manage the same hedges and every of them, or such parts thereof as aforesaid on either side, according to the best rules of good husbandry; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will suffer the orchards of and belonging to the said hereby demised premises to be depastured with any cattle which may hurt or prejudice the trees therein; AND that in lieu and stead of every apple-tree that during the term hereby granted shall be in the said orchard or orchards, and which shall happen to die or be blown down or decayed, he the said *Edward Edensee*, his executors, administrators, or assigns, shall or will provide and plant a kindly and flourishing young apple-tree, likely for growth, and of the value of two shillings at the least, and fence in, secure, preserve, and engraft the trees to be so planted, and every of them, in a husband-like manner; AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will, at any time during the term hereby granted, nor after the expiration thereof, without the consent of the said *Thomas Edensor*, his heirs or assigns, thereunto in writing under his or their hand or several hands first had and obtained, carry, or cause, permit, or suffer to be carried from off the said hereby demised premises, or any part thereof, any corn in straw, straw, muck, dung, compost, soil, and manure which shall arise, grow, or be made thereon; but shall or will use, consume, and spend the same muck, dung, ashes, compost, soil, or manure, from time to time, on such part of the said hereby demised premises as shall most reasonably require the application of the same for dressing, or leave the same, and also such corn in straw and straw, on the said hereby demised premises, in heaps, and not

during the term,

leaving the wood which shall be most proper for steepers, which lessee will lay down for that purpose;

not to suffer the orchard-trees to be injured by cattle;

and to plant a young tree in the room of every one that may happen to die or decay;

not to carry off any straw, &c.

but to spend it on the premises;

not to carry
out any
foreyards, or
do any
waste;

or sell or car-
ry off any
lime-stone
before it is
burnt, ex-
cept, &c.;

to bear all
parochial
and other
taxes,
charges, &c.

and glaze
the win-
dows, and
repair the
siles, &c.

and scour
the ditches
once a year.

Lessor to en-
ter in the
last year to
prepare the
ground for
tillage.

scattered, for the benefit of the said *Thomas Edensor*, his heirs or assigns: AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will carry out any foreyards from the higher part of any hilly field, parcel of the said hereby demised premises, or at any time during the term hereby granted do or commit, or suffer to be done or committed on the said hereby demised premises, any manner of waste, spoil, destruction, and ill-husbandry whatsoever: AND that he the said *Edward Edensee*, his executors, administrators, or assigns, shall not or will sell or carry off, or permit or suffer to be sold or carried off from the said demised premises, any lime-stone before the same shall be burnt to lime, other than and except such stone of lime-rock as shall be raised from the said quarry called *Lobb Quarry*, from which the said *Edward Edensee*, his executors, administrators, or assigns, may take, sell, and carry away any quantity of stone that he or they respectively shall think proper; AND that he the said *Edward Edensee*, his executors, administrators, and assigns, shall and will take all parish apprentices, do all parish offices, and pay and discharge all and singular the rates, taxes, charges, burdens, compositions to the highways, and impositions whatsoever, parochial and parliamentary, inclusive of the land-tax, which at any time, and from time to time during the term hereby granted, are or shall be taken, done, paid, discharged, or performed for or in respect of the said hereby demised premises, and when and as the same respectively shall be to be taken, paid, done, discharged, and performed; and glaze and lead the windows; and, having rough timber provided by the said *Thomas Edensor*, his heirs or assigns, repair the gates, bars, posts, and siles of and belonging to the said hereby demised premises; and find and provide for the same windows new glass and lead when and as often as occasion shall require; AND that he the said *Edward Edensee*, his executors and administrators, shall and will cleanse and scour the ditches and gutters of and belonging to the meadow and water-let grounds, parcel of the said hereby demised premises, at least once in each year of the term hereby granted: AND that it shall and may be lawful to and for the said *Thomas Edensor*, his heirs or assigns, or any person or persons having the reversion of the said hereby demised premises, and his and their tenants, salefmen, and workmen, in the proper seasons of the last year of

of the said term to enter into or upon any of such acres of the arable ground of the said hereby demised premises as shall be then fallow or out of tillage, and not have been sown with clover or clover grass seeds in the preceding year, and to break up and prepare the arishes which shall be in a course of tillage, and sow the same and the ground to be so broken up with seeds, and hold the part or several parts of the said hereby demised premises which shall be so sown, from the time or several respective times at which the same shall be sown, during the then residue of the said term, without making any recompence or satisfaction for the same: PROVIDED ALWAYS, and it is hereby granted, that if it shall so happen that the yearly rent hereby reserved shall be in arrear and unpaid, in part or in all, by the space of twenty-eight days next over or after any or either of the said days or times whereon the same ought and is hereinbefore limited to be paid, and the same shall be lawfully demanded on the expiration of the said twenty-eight days, or at any time afterwards, and shall not be paid at the time of such demand, and at the time of such demand made no distress or distresses may be lawfully had and peaceably taken on the said hereby demised premises, whereby or wherewith the rent so being in arrear, and all other the arrears thereof, (if any such there be,) and the costs, charges, and expences of and attending the levying the same, may be raised and fully satisfied; or if the said *Edward Edenssee*, his executors, administrators, or assigns, shall at any time during the term hereby granted do or commit, or suffer to be done or committed on the said hereby demised premises, or any part thereof, any manner of waste, spoil, or destruction whatsoever; or if breach or default shall be made by the said *Edward Edenssee*, his executors, administrators, or assigns, any or either of them, in the performance of the whole, or any part of any clause of any or either of the covenants, stipulations, or agreements hereinbefore contained to be performed by or on the part and behalf of the said *Edward Edenssee*, his executors, administrators, and assigns, then it shall or may be lawful to and for the said *Thomas Edensfor*, his heirs or assigns, into and upon all and singular the said hereby demised premises, or into and upon any part or parts thereof in the name of the whole, to re-enter, and all and singular the said hereby demised pre-

Power of re-
entry.

Covenant by
lessor to re-
pair the
dwelling-
house, &c.;

and find
rough tim-
ber for re-
pairing the
gates, &c.;

for quiet en-
joyment.

Grant of
such apple-
trees as may
be blown
down, &c.

misés, and every part thereof, to have, retain, repossess, and enjoy, as if these presents had never been made or executed; these presents, or any thing herein contained to the contrary thereof in anywise notwithstanding. AND the said *Thomas Edensor* doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree, to and with the said *Edward Edensee*, his executors, administrators, and assigns, in manner following; (that is to say,) that he the said *Thomas Edensor*, his heirs or assigns, shall or will, from time to time during the term hereby granted, repair and keep in tenantable repair the dwelling-house and other the edifices and buildings, parcel of the said hereby demised premises, or belonging thereto, with all needful and necessary reparations and amendments whatsoever, (other than and except lead and glass for the windows, and spar-sticks for the thatch,) when and as often as need or occasion shall require the same from time to time during the term hereby granted, when thereunto requested by the said *Edward Edensee*, his executors, administrators, or assigns; and find and provide for the said *Edward Edensee*, his executors, &c. sufficient rough or unwrought timber for the repair of the gates, bars, posts, and stiles of the said hereby demised premises, when the same shall be in want of repair; and find and provide for the said hereby demised premises new gates, bars, posts, and stiles, when the old ones shall be decayed and not worth repairing: AND LASTLY, that subject to the conditions hereinbefore expressed, the said *Edward Edensee*, his executors, administrators, and assigns, shall or may enter into and upon the said hereby demised premises, and have, hold, use, occupy, possess, and enjoy the same during the term or time of three years hereby granted therein, without any let, suit, trouble, molestation, eviction, ejection, expulsion, interruption, hindrance, or denial of, from, or by the said *Thomas Edensor*, his heirs and assigns, or any other person or persons whomsoever lawfully or equitably claiming or to claim the same premises, or any part thereof, by, from, or under him or them: AND the said *Thomas Edensor* doth hereby for himself, his heirs and assigns, grant unto the said *Edward Edensee*, his executors, administrators, and assigns, that he and they shall or may lawfully take all and singular the apple-trees being or to be on the said hereby demised premises, which shall happen to die, be blown down, or become

become decayed, and in the lieu or stead of which a young apple-tree shall be planted, according to the covenant of the said *Edward Edensee* hereinbefore contained in that behalf. IN WITNESS, &c.

Lease of Coal Works for 21 Years.

THIS INDENTURE, made, &c. BETWEEN the Right Honourable *George Edward Henry Arthur* Earl of *Powis*, of the one part, and *William Edensee* of, &c. coal-miner, of the other part, WITNESSETH, that the said Earl of *Powis*, for and in consideration of the rent, duties, payments, covenants, and agreements hereinafter reserved and contained on the part of the said *William Edensee*, his executors, administrators, and assigns, to be paid, done, observed, and performed, HATH demised, leased, and to farm letten, and by these presents BOTH demise, lease, grant, and to farm let and set unto the said *William Edensee*, his executors, administrators, and assigns, ALL and every the mines, veins, pits, groves, beds, and holes of coal, of all kinds, nature, and quality, which now are, can, shall, or may be opened, found out, or discovered by any ways or means whatsoever in, upon, or underneath all that tract of waste land commonly called or known by the name of *Coed yt Alt*, and all those two farms or tenements respectively called or known by the names of the *Flannegs* and *Cove Bed*, with all that yard lately called *Simmond's-yard*, now thrown open and annexed unto a close called *Cove Flan droos yr Ty*, parcel of the *Flannegs* farm aforesaid, which farms and yard are now in the tenure or occupation of *Margaret Cocker* widow, or of *Edward Rogers* as her undertenant, and together with the said tract of waste land are in the townships of *Duddleston* and *Wigginton*, or one of them, in the parish of *Ellismore*, and within and parcel of the manor of *Trayan* in the county of *Salop*; AND ALSO full and free liberty, licence, and authority to and for the said *William Edensee*, his executors, administrators, and assigns, to open, dig, search for, work, win, gain, raise, and get up all sorts of coal in and from the said lands, or any part or parcel thereof, and to dig, sink, drive, run, and make any pits, shafts, levels,

P R E C E D E N T S

levels, foughs, trenches, and watercourses, in and about the said mines or works; and also to erect, build, and set up in and upon the said lands, or any part thereof, any bingsteads, storehouses, smithies, forges, mills, engines, hovels, and other buildings or machines for the better and more effectual working of the said mines, and getting up in and upon *Coed yt Alt* waste aforesaid such buildings as shall be necessary for the accommodation of the colliers who shall from time to time be employed in and about the said mines, and for that purpose to raise, take, convert, and use stone and clay in and upon the said waste (except from the rock of *Coed yt Alt* aforesaid); AND LIKEWISE full and free ingress, egress, and regress to and for the said *William Edensee*, his executors, administrators, and assigns, his and their agents, workmen, labourers, servants, customers, and dealers in and upon the said farms, yard, and waste, with horses, carts, and other carriages to and for the getting, taking, and carrying away the said coal, making such reasonable satisfaction as hereinafter mentioned to the tenants or occupiers for the time being of the said farms and yard for such trespass or other damage as shall be committed or occasioned thereon, in consequence of the liberties and premises hereby granted, TO HAVE, HOLD, use, exercise, and enjoy the said mines, veins, pits, groves, beds, and holes of coal, privileges, liberties, and powers, and all and singular other the premises hereby respectively granted and demised, or intended so to be, with their and every of their appurtenances, unto the said *William Edensee*, his executors, administrators, and assigns, from the day next before the day of the date hereof, for and during and unto the full end and term of twenty-one years then next following, and fully to be complete and ended; AND TO HAVE AND TO HOLD all and every the coal that shall be found, gotten, and raised within the term aforesaid, in all or any part of the said lands, unto the said *William Edensee*, his executors, administrators, and assigns, to his and their own proper use and uses, as his and their own proper goods and chattels, for EVER YIELDING AND PAYING unto the said Earl of *Powis*, his heirs and assigns, for every ton or stack of coals that shall be found, gotten, and raised as aforesaid, the rent, royalty, or sum of eight pence of lawful money of *Great Britain*, the said ton or stack to be calculated and ascertained by measure on the bank, and to contain one square yard

yard in length and breadth, and one yard and three quarters in height; and the said rent, royalty, or sum to be paid quarterly at or upon the four usual days of payment in the year, (that is to say) the feast of the Nativity of St. *John* the Baptist, St. *Michael* the Archangel, the Birth of our Lord Christ, and the Annunciation of the Blessed Virgin *Mary*, during the said term hereby granted; the first payment to be made on *Midsummer-day*: AND the said *William Edensee*, for himself, his heirs, executors, and administrators, and every of them, doth hereby covenant, promise, grant, and agree, to and with the said Earl of *Powis*, his heirs and assigns, in manner following, *viz.* that he the said *William Edensee*, his executors, administrators, and assigns, shall and will well and truly pay or cause to be paid unto the said Earl, his heirs and assigns, the said rent or royalty of eight pence a ton or stack for all the coal that shall be gotten as aforesaid, at the time and in the manner and proportion hereinbefore mentioned, according to the true intent and meaning hereof; AND for the better ascertaining the amount thereof, shall and will keep or cause to be kept perfect, just, and true books of account of all coal which shall be raised in the said works, wherein he or they shall from day to day set down or cause to be set down and entered the daily quantity thereof; AND every of the four feast days aforesaid in each year of the said term hereby granted, make out and deliver unto the said Earl, his heirs and assigns, or his or their agent for the time being, a proper abstract of the said books of account for the then last preceding three months, and by himself or themselves, or his or their agent for the time being, verify the same upon oath, if required; AND ALSO permit and suffer the said Earl, his heirs or assigns, or his or their agent for the time being, at all seasonable times to inspect the said books of accounts, and take copies thereof, or extracts therefrom; AND ALSO shall and will from time to time, upon demand, pay the several tenants or occupiers for the time being of the said farm and yards such satisfaction for the trespass or damage that shall be committed or done on their respective lands by working the mines aforesaid, or carrying the produce thereof away, or any materials to and from the said premises, as two indifferent persons, whereof the one to be nominated by the said Earl, his heirs or assigns, and the other by the said *William Edensee*, his executors, administrators, or assigns, shall think reasonable; AND LIKEWISE that he the said *William*

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Edensee, his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the said term hereby granted, work and make trials for coal in, through, and underneath the said lands, according to the best and most improved methods of carrying on collieries, and the usual course of proceeding in and continuing such works with effect, and according to the true intent and meaning of these presents; AND get and raise all the coal of every kind which shall be found in the said mines or pits fully and clearly before him and them, so as none be left remaining therein; AND not neglect or omit the effectual working of the said mines for the space of six weeks in any one year, except only so far as he or they shall be hindered by some inevitable accident; but from and after the 29th day of *September* next ensuing the date hereof shall and will constantly keep and employ, in the digging, searching for, and getting such coal, five able labouring colliers at the least, from *Michaelmas* to *Lady-day* in every year, and ten able labouring colliers at the least, from *Lady-day* to *Michaelmas* in every year; AND FURTHER, that he the said *William Edensee*, his executors, administrators, or assigns, shall and will with all convenient speed make and drive a good and effectual level of three feet in breadth and five feet in heighth at the least from the river *Dee*, through the *Boat-field*, the *Wood*, the *Bryer-fyze*, *Cae Gwentydd*, *Cae Newydd*, *Cae Connal*, and *Cae Firm*, parcel of the aforesaid farm called the *Flannegs*, and the same level well and effectually prop and secure, so as the said mines may be drained, and the coals therein be gotten; AND shall and will from time to time well and effectually prop and secure all and every the pits and shafts which he or they shall sink, dig, or work in or upon the said lands, or any part thereof, so that man and beast be free from danger thereby; AND when and as all and every of the same pits and shafts become useless, or not worth working in, shall and will immediately make or fill the same, so as they and every of them be made secure and free from danger; AND MOREOVER, that he the said *William Edensee*, his executors, administrators, and assigns, shall and will at his and their own proper costs and charges well and sufficiently repair, maintain, and keep all and every the houses, storehouses, bingsteads, smithies, forges, mills, engines, hovels, and other buildings and machines, pits, shafts, levels, foughs, trenches, and watercourses, which are, or in consequence of the liber-

ties

ties hereby granted shall be built, erected, dug, sunk, drove, made in, upon, or underneath the said farms, yard, or waste, or any part thereof, for the working of the said coal mines and carrying on the said works, or the accommodation of labourers employed therein, in good and substantial order, condition, and repair, in all things, from time to time, and at all times during the term hereby granted, if the same shall so long continue useful, having towards the building and repairing the roofs and doors of such houses and buildings, for the accommodation of colliers, and for making air-pipes for the said works not exceeding sixty yards in length, sufficient rough timber provided and delivered by the said Earl, his heirs or assigns; AND at the end or sooner determination of the said term, all and singular the same premises, with all timber and other materials remaining in the useful pits, levels, or shafts, shall and will leave and yield up unto and for the use and benefit of the said Earl of *Powis*, his heirs and assigns, being allowed by him or them such price or value of and for the engines, machines, and last-mentioned timber as shall be settled and adjudged by two indifferent persons, whereof the one to be nominated by the said Earl, his heirs or assigns, and the other by the said *William Edensee*, his executors, administrators, or assigns; AND FURTHERMORE, that he the said *William Edensee*, his executors, administrators, and assigns, shall and will at all times when the said mines shall be in work, convey or cause to be conveyed down *gratis*, from the surface into and through the said mines, by, in, or upon the engines or machines by which he or they, or his or their agents, workmen, labourers, or servants, shall usually be conveyed down, such person or persons as the said Earl of *Powis*, his heirs, or his or their agent for the time being, shall at any time or times name and appoint for the purpose; AND permit and suffer the said person or persons to survey and inspect the said mines and works, and to see whether the same are kept in good and substantial order, condition, and repair, and are worked, managed, and carried on in a fair and workman-like manner, according to the true intent or meaning of these presents, or not; AND after such survey and inspection shall and will reconvey such person and persons by and in manner aforesaid from and out of the said mines and works: AND the said Earl of *Powis* DOth for himself, his heirs, executors, and administrators, hereby covenant, promise, and agree, to and

with the said *William Edensee*, his executors, administrators, and assigns, that he the said *William Edensee*, his executors, administrators, and assigns, paying the said rent or royalty hereby reserved, and observing and performing the covenants and agreements herein contained, shall and may peaceably have, hold, occupy, and enjoy the said demised premises, and every part thereof, and all and singular the liberties and privileges hereby granted, according to the true intent and meaning of these presents, without the lawful let, suit, eviction, molestation, or denial of the said Earl; his heirs or assigns, or of any person or persons lawfully or equitably claiming or to claim from, by, under, or in trust for him, them, or any of them: PROVIDED ALWAYS, and it is hereby covenanted, agreed, and declared by and between the said parties hereto, and these presents are upon this express condition, that in case the said rent or royalty hereby reserved shall happen to be behind and unpaid, in part or in all, for the space of twenty days next after either of the said feast days hereinbefore appointed for payment thereof, and the same shall be demanded on the expiration of those twenty days, or at any time afterwards, and shall not be paid at the time of such demand, or if the said *William Edensee*, his executors, administrators, or assigns, shall fail or omit to keep such books of account, and to verify the same upon oath when required as aforesaid, or to deliver such abstracts thereof when and as aforesaid, or to permit and suffer such copies or extracts of the said book to be taken as aforesaid, or do or shall refuse or neglect to make and pay unto the several tenants or occupiers for the time being of the said lands, such satisfaction for trespasses or damages as aforesaid, or if he or they do or shall neglect or omit to work and make such trials for coals as aforesaid, or to raise all the coal which shall be found in the said works fairly before him and them as hereinbefore mentioned, or to keep in constant employ, in the said works, such number of labouring colliers as aforesaid, or do not, or shall not in manner aforesaid make and drive such level and prop, and secure the same, and also the useful pits and shafts, and fill up those that shall become useless or not worth working in as aforesaid, and also put, keep, and maintain in good and substantial order, condition, and repair, all the houses, storehouses, bingsteads, smithies, forges, mills, engines, hovels, and other buildings and machines, pits, shafts, levels, foughs, and trenches which are or shall be built, erected, set up, dug, sunk, drove,

drove, or made in or upon the said farm, yard, or waste, or any part thereof, as aforesaid, except such only as are or shall become uselefs; or if the said *William Edensee*, his executors, administrators, or assigns, shall refuse or neglect to convey down and reconvey up, into, through, and out of the said mines and works in manner aforesaid, such person or persons as shall from time to time be appointed to survey and inspect the same as aforesaid, or shall hinder or molest such person or persons in the making such survey or inspection, or do or shall neglect or omit the effectual working of the said mines for six weeks in any one year, except so far as he or they shall be hindered by some inevitable accident as aforesaid; or do or shall assign, set, or let the said demised premises, or any part thereof, to any person or persons whomsoever without the consent and licence of the said Earl, his heirs or assigns, first obtained and had in writing under his or their hand or hands, or the hand of his or their agent for the time being, and that only for such time and in such manner as shall in such licence be expressed; THAT THEN and thenceforth, for all, any, or either of the said causes, it shall and may be lawful to and for the said Earl of *Exeter*, his heirs or assigns, into all and singular the said demised premises, or into any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as in his and their first and former estate, without any relief to be had either at law or in equity by the said *William Edensee*, his executors, administrators, or assigns; any thing herein contained to the contrary notwithstanding: PROVIDED ALSO, and the said parties hereto hereby respectively further covenant, agree, and declare unto and with each other, that if it shall happen that the said demised premises, or such new mines and works as shall be discovered and worked by virtue of these presents, shall not yearly, and every year during the last twenty years of the said term hereby granted, produce coal after the rate of thirty tons a week, one week with another, to be ascertained by measure in the manner hereinbefore expressed, for the aforesaid rent or royalty, that then and in such case the said *William Edensee*, his executors, administrators, or assigns, shall and will on every of the said feast days of *Midsummer*, *Michaelmas*, *Christmas*, and *Lady-day*, during that part of the said twenty years wherein the same mines, works, and premises shall not produce as hereinbefore specified,

specified, well and truly pay or cause to be paid unto the said Earl, his heirs or assigns, the rent or sum of 25*l.* of lawful money of *Great Britain*, in lieu and stead of the payment hereinbefore reserved, else shall and will give notice in writing unto the said Earl, his heirs or assigns, that they will surrender or yield up this present lease, and the premises hereby demised, at the end of twelve calendar months next after such notice ; AND shall and will accordingly surrender and deliver up the same to be cancelled and made void ; and also leave and yield up all such houses, store-houses, bingsteads, smithies, forges, mills, and other erections and buildings which shall be erected and built by virtue of these presents, and remain standing one year next before the time of such notice given, together with all useful pits, shafts, levels, foughs, trenches, and other works therein or belonging thereunto, in good and substantial order, condition, and repair, according to the covenant hereinbefore contained ; AND then and in such case, the said *William Edensee*, his executors, administrators, and assigns, having fully observed and performed all and every the covenants and agreements herein contained, on his and their part to be observed and performed, these presents, and every clause, article, and thing herein contained, and the term and estate hereby granted, shall, at and from, and after the end of such twelve calendar months next following such notice, cease, determine, and be utterly void to all intents and purposes whatsoever ; any thing herein contained to the contrary notwithstanding. IN WITNESS, &c.

Lease of a Farm in *Shropshire* for 21 Years; commencing as to different Parts at different Periods, and subject to pecuniary and other Rents.

Parties.

Consideration.

THIS INDENTURE, made, &c. BETWEEN the Right Honourable *George Edward Henry Arthur* Earl of *Powis*, of the one part, and *John Edensee* of, &c. farmer, of the other part, WITNESSETH, that the said Earl of *Powis*, for and in consideration of the rents, duties, services, covenants, and agreements hereinafter reserved and contained on the

the part of the said *John Edensee* to be paid, done, observed, and performed, HATH demised, leased, set, and to farm let, and by these presents BOTH demise, lease, set, and to farm let unto the said *John Edensee*, ALL that messuage, tenement, and farm commonly called or known by the name of *Timberth Farm*, situate, lying, and being in the township of *Timberth* and parish of *Chirbury* in the county of *Salop*, and within and parcel of the manor of *Chirbury* in the said county of *Salop*, and lately in the tenure of *J. H.* and now or late of the said *John Edensee*; TOGETHER with all and singular the rights, members, and appurtenances to the said premises, or any part thereof, belonging or appertaining (EXCEPTING and always reserved out of this demise unto the said Earl of *Powis*, his heirs and assigns, all woods, underwoods, timber, and other trees and saplings, of what kind or nature soever, now growing or being, or which shall hereafter grow or be in or upon the said demised premises, or any part thereof; AND all mines, veins, and beds of coal, lead, copper, or other metals or minerals, and all quarries of lime or other stone now being, or which shall hereafter be found or discovered in or upon the said demised premises, or any part thereof, with full liberty and power to and for the said Earl of *Powis*, his heirs and assigns, and his and their agents, servants, workmen, chapmen, and dealers, and every other person that shall be authorised for that purpose, at any time or times hereafter to enter into or upon the said demised premises, or any part thereof, and there to fell, work up, cord, stack, burn, coal, or otherwise convert the said wood and underwood, trees, and saplings, or any part thereof, and also to dig, delve, search for, get up, dress, and make merchantable the said coal, stones, metals, and minerals, or any part thereof; AND the said excepted premises, or any part thereof, to take and carry away with all or any sort or manner of carriages; and for the several and respective purposes aforesaid to make and erect all or any kind of warehouses, engines, machines, saw-pits, coal-hearths, and other conveniences on the said demised premises, or any part thereof, at his or their pleasure; AND ALSO, except and reserved unto the said Earl, his heirs and assigns, full liberty and power to and for him and them, and his and their agents, servants, and workmen, at any time or times hereafter to dig, raise, and carry away marl, clay, gravel, and sand in and from the said demised premises, or any part thereof,

Demise.

Exception of trees;

mines.

Liberty to take away sand, &c.;

thereof, for the manuring of other his or their lands, the making of roads, bricks, or tiles, or other purposes (in case there shall be more than shall be wanted thereon); AND to plant any part or parts of the said demised premises with all or any kind of forest trees, and the same hence to preserve; AND ALSO to make any road or roads, piece or pieces of water and watercourses, and the same from time to time to alter and divert; AND to take from the said *John Edensee*, his executors, administrators, and assigns, and convey in exchange for other lands or tenements, or sell any part or parts of the said premises hereby demised; AND likewise to plough and fallow, at or after *Christmas-day* next before the determination of this demise, any part or parts of the said demised premises, and to take and have convenient stabling and tyings in the out-buildings on the said demised premises, for the horses and cattle which shall be employed in and about the same, making to the said *John Edensee*, his executors, administrators, and assigns, on the exercise of all or any of the liberties and privileges hereinbefore excepted, such satisfaction and recompence for the damage he or they shall sustain thereby, as two indifferent persons (whereof the one to be chosen by the said Earl, his heirs or assigns, and the other by the said *John Edensee*, his executors, administrators, or assigns) shall think reasonable; AND LIKEWISE except and reserved unto the said Earl, his heirs and assigns, full liberty and power to and for him and them, and his or their agents, servants, and workmen, to sow with clover and grafs seeds such part and parts of the said demised premises as shall be in tillage the spring seed-time next before the determination of this demise, and upon or after the first day of *November* next following such seed-time to take possession of the same lands, and fence and preserve the same, and the clover and grafs therein, thenceforth to and for his and their own use and benefit; AND ALSO upon every fall which shall be made on the wood or coppice lands of or on the said demised premises, to fence and copy up the same to preserve the future sprigs therein from the bite of sheep and cattle, and all other trespass and damage during the space of years next after each fall respectively; AND ALSO except and reserved unto the said Earl, his heirs and assigns, all game, wild fowl, and fish which now are or hereafter shall be in or upon the said demised premises, or any part thereof, with the sole liberty, privilege, and power of hunting, coursing,

to plant;

to make roads, &c.;

to exchange any part of the premises;

to plough and fallow part of the premises a certain time before the end of the lease, and to have convenient stabling, &c. for that purpose, making satisfaction;

to sow part with clover seed;

to fence the underwood upon every fall.

Game.

courſing, hawking, ſetting, fowling, and fiſhing for the ſame by himſelf or themſelves, and his or their companions, and by his or their gamekeepers, with ſervants, horſes, and dogs, in and upon the ſaid demised premises, or any part thereof; AND the game, wild fowl, and fiſh there killed or taken, to have and carry away to and for his and their own uſe and benefit, at his and their pleaſure)

TO HAVE AND TO HOLD the ſaid meſſuage, tenement, *Habendum.*

farm, and other the premises hereby demised (except as hereinbefore excepted) unto the ſaid *John Edenſee*, his executors, adminiſtrators, and aſſigns, in manner following; (that is to ſay,) the part or parts thereof which is or are meadow lands, from the 2d day of *February* laſt paſt; the dwelling-houſe and neceſſary out-buildings, from the 1ſt day of *May* next coming; and the reſidue of the ſaid premises, from the day of the date hereof, for and during the full and whole term and time of 13 years thence reſpectively next enſuing, and fully to be complete and ended; AND TO HOLD ſuch field, if not leſs than acres, part of the ſaid demised premises, as

ſhall be hereafter appointed by the ſaid Earl, his heirs or aſſigns, or his or their agent for the time being, as a booby paſture unto the ſaid *John Edenſee*, his executors, adminiſtrators, and aſſigns, from the end or ſooner determination of the ſaid term therein until the firſt day of *May* then next following;

YIELDING, paying, rendering, and performing therefore yearly and every year during the continuance of this demise, unto and for the ſaid Earl, his heirs and aſſigns, the ſeveral rents, duties, and ſervices hereinafter mentioned, *viz.* the rent or ſum of 120*l.* of *Reddendum.*

lawful money of *Great Britain*, free and clear of and from all taxes and deductions whatſoever (except land-tax), by two equal half-yearly payments at or upon every 24th day of *June* and 25th day of *December*, (the firſt payment to be made on the 24th day of *June* next,) AND two ſtrikes or buſhels of oats, and one couple of fat fowls, on every 25th day of *December*; AND ALSO two days work or labour with a waggon and four horſes, attended by or with a waggoner, at ſuch time or times in the year as ſhall from time to time be appointed; AND likewiſe the keep of a dog, and a cock, if required; AND grinding all the corn and grain which ſhall be eat or conſumed in or upon the ſaid demised premises, or any part thereof, during the continuance of this demise, at the mill of the ſaid Earl,
his

PRECEDENTS

his heirs or assigns, called *Heightly Mill* in the parish of *Cbirbury* aforesaid, he and they being well used, and in convenient time dispatched; AND doing and performing suit and service at all and every the courts to be holden or kept for the manor or borough of *Cbirbury* aforesaid, and abiding by and obeying all and every the orders and bye-laws which shall be there made and ordained; AND ALSO YIELDING AND PAYING for every acre of meadow or usual mowing ground of the said demised premises, which he the said *John Edensee*, his executors, administrators, or assigns, shall plough or break up for tillage, and for every acre of the premises hereby demised, exceeding forty acres, which he or they shall have in tillage in any one year of this demise, and also for every acre thereof, exceeding twenty-five acres, which he or they shall mow in any one of the last four years of this demise, and likewise for every acre thereof, exceeding acres, which he or they shall sow with flax or hemp-seed, and for each and every of them severally and respectively the rent or sum of 5*l.* of like lawful money, over and above the said rents, duties, and services hereinbefore reserved, and in that proportion for more or less than an acre, at or upon every said 24th day of *June* and 25th day of *December*, the first payment thereof respectively to be made on such of the said days as shall first happen after the committing or doing of the acts or deeds for which the same is or are hereby respectively reserved as aforesaid, and to continue payable and be paid thenceforth during the continuance of this demise; AND LIKEWISE YIELDING unto the said Earl, his heirs and assigns, for every timber or other tree or sapling which he the said *John Edensee*, his executors, administrators, or assigns, shall cut down, top, or lop, without the licence of the said Earl, his heirs or assigns, or his or their agent for the time being, the sum of 5*l.* of like lawful money. AND the said *John Edensee* for himself, his heirs, executors, administrators, and assigns, BOTH hereby covenant, promise, and agree, to and with the said Earl of *Powis*, his heirs and assigns, in manner and form following, *viz.* that he the said *John Edensee*, his executors, administrators, and assigns, shall and will well and truly pay, render, and perform, or cause to be paid, rendered, and performed unto and for the said Earl, his heirs and assigns, the aforesaid yearly rents of 120*l.*, two strikes or bushels of oats, one couple of fowls, two days labour with a waggon, a

Covenant
for payment
of rent;

waggoner and four horses, and the keep of a dog and cock, and also the said several other yearly and other rents or sums of money hereinbefore reserved, (if the same shall respectively become payable,) on the days and in the proportions hereinbefore limited and appointed for payment thereof respectively; AND shall and will pay, bear, to pay taxes; and discharge all taxes, rates, assessments, and impositions whatsoever (except the land-tax) which shall be charged on or payable for the said demised premises, or any part or parcel thereof, from time to time, or at any time or times during the continuance of this demise; AND ALSO to repair. shall and will at his and their proper costs and charges well and sufficiently repair, scour, cleanse, amend, maintain, keep, and preserve the said messuage, tenement, and other the premises hereby demised, and all the houses, edifices, walls, buildings, hedges, ditches, mounds, gates, bars, stiles, pales, rails, fences, foughs, drains, gutters, and watercourses which now is or are, or at any time during the continuance of this demise shall be in or upon the said demised premises, or any part thereof, in, by, and with all needful and necessary repairs, scourings, cleansings, and amendments whatsoever, where, when, and as often as need shall be, or occasion require, (accidents by fire only excepted,) during the continuance of this demise; AND at the end or sooner determination thereof, all and singular the same premises, and every part and parcel thereof, so respectively well and sufficiently repaired, cleansed, amended, kept, and preserved, shall and will leave and yield up unto the said Earl, his heirs or assigns, he the said *John Edenfee*, his executors, administrators, and assigns, having for and towards the doing such repairs necessary and convenient rough timber on the stem on the said demised premises, or within two miles thereof, by the appointment of the said Earl, his heirs or assigns, or his or their agent for the time being, and not otherwise: AND FURTHER, that the said Earl, his heirs or assigns, and his or their agent for the time being, with artificers and workmen shall and may in the day-time, at any time or times during this demise, enter into and upon the said demised premises, or any part thereof, and view, search, examine into, and see the state and condition of the same, and leave notice in writing thereon of such defects or want of reparation, scouring, cleansing, or amendment as shall be there found; AND in case the said *John Edenfee*, his executors, administrators, or assigns, shall not well and sufficiently

Lessor to enter to inspect the state of the premises;

and to leave notice in writing of the want of repair.

If not repaired within three months after notice, lessor to enter and repair; and, upon non-payment of the expence by lessee, to distrain.

Lessee to plant quick in the hedges, and to protect it from the cattle;

and not top or lop the trees, except, &c.;

to inhabit the dwelling-house constantly, and manage the farm properly;

and thresh the corn on the premises.

sufficiently repair and amend the same within three calendar months next after such notice, THAT then he the said Earl, his heirs or assigns, or his or their agent for the time being, with artificers and workmen shall and may enter into and upon the said demised premises, and do, rectify, and complete such reparations and defects, and charge the costs and expences thereof unto and upon the said *John Edensee*, his executors, administrators, and assigns, as an additional rent for the said demised premises, for the year in which he or they shall neglect to do such repairs; and upon non-payment thereof he the said Earl, his heir or assigns, or his or their agent for the time being, shall and may levy and recover the same by distress and sale of the goods and chattels to be found on the said demised premises, or any part thereof, in such ample manner and form, and as fully and effectually as he or they may levy the said original or proper rent hereby reserved, or either of them, in case the same shall be in arrear; AND LIKEWISE that he the said *John Edensee*, his executors, administrators, and assigns, from time to time, and at all times during the continuance of this demise, shall and will plant quick in the dead or decayed part of the hedges of the said demised premises, and use his and their best endeavours to preserve and keep from bite of cattle and other destruction, spoil, and damage, as well the said quick as all and every the woods, underwood, timber and other trees and saplings which now are or hereafter shall be planted or growing on the said demised premises, or any part thereof; AND shall not nor will cut or break down, root up, top, lop, or injure any or either of them, except taking timber for repairs by appointment as aforesaid, and also taking by like appointment (and not otherwise) from such of the said trees as are pollards, reasonable wood for summer fuel in the dairy only, and for ploughbote, cartbote, and hedgbote of and on the said demised premises; AND shall and will constantly inhabit, or cause to be inhabited by a fit and proper family, the dwelling-house, and occupy, manage, manure, and improve in a good, proper, and husband-like manner the lands and premises hereby demised, and not burn, bat, run out, or otherwise beggar or impoverish, nor commit or suffer any waste, spoil, or destruction on the same, or any part thereof; AND ALSO shall and will thrash and clean on the said demised premises all the corn and grain which shall be grown thereon, and eat and consume thereon all the hay,

hay, straw, fodder, and fuel which shall be produced on the same, or any part thereof; AND likewise shall and will yearly, and every year during the continuance of this demise, at seasonable times and in a husband-like manner, spend, use, spread, and bestow in and upon fit and proper parts of the said demised premises four waggon loads of good stone lime, and all the muck, dung, compost, and manure which shall be made, produced, or raised on the said demised premises, or any part thereof; AND shall not nor will break up or sow with corn or grain any more or other part or parts of the lands hereby demised, than he or they shall at any time well and sufficiently manure; nor take more than three crops therefrom under any one tillage, for one of which crops he or they shall and will make a summer fallow, or have a fallow sown with turnips on the same ground, or break up a cloverley of the first or second years growth, and well manure the same; AND with the last of such crops lay down the land so tilled therewith well sown with a proper quantity of good clover and rye-grass seeds, and shall and will at the end or sooner determination of this demise, leave on the said demised premises to and for the use and benefit of the said Earl, his heirs or assigns, one half part of all corn and grain whereof the seed shall have been tilled or sown thereon the then last seedness in any brush or stubble, and one third part of all corn and grain whereof the seed shall have been sown thereon the then last seedness in a fallow or a cloverley of the first or second year's growth, well manured; and also all the muck, dung, compost, and manure which shall be made, produced, or raised on the said demised premises, or any part thereof, during the then last twelve months, without having or claiming any allowance or satisfaction for the same; AND ALSO shall and will permit and suffer the said Earl, his heirs and assigns, to have, exercise, and enjoy all and every the liberties, privileges, matters, and things hereinbefore excepted out of this demise without any let or molestation, and shall not nor will assign, set, or let the said demised premises, or any part thereof, to any person or persons whomsoever without the licence of the said Earl, his heirs or assigns, first had and obtained in writing, and that only for such time, to such person or persons, and in such manner and form as shall in such licence be expressed; nor shall nor will permit or suffer any person or persons to make or use any road or

X

path,

Covenants
by lessor.

path, (other than those which are or shall be lawfully established,) or to hunt, course, hawk, set, fowl, or fish in, upon, or over the said demised premises, or any part thereof, but shall and will when and as often as required by the said Earl, his heirs or assigns, give notice in writing to all and every or any person and persons to keep off the said demised premises, and not thereafter come into, or be found upon the same, or any part thereof; AND against such person and persons, or any of them, who shall after such notice offend therein, to or for the intent or purpose of making or using a new road or path, or of hunting, coursing, hawking, setting, fowling, or fishing, shall and will at the request, costs, and charges of the said Earl, his heirs or assigns, commence and prosecute one or more suit or suits at law for the same, and not delay, release, compound, or discontinue the same, or any of them, without the consent of the said Earl, his heirs and assigns; and the damages which shall be recovered thereby shall and will pay and apply for and towards the costs, charges, and expences of such suit or suits. AND the said Earl of *Powis* for himself, his heirs and assigns, doth hereby covenant, promise, and grant to and with the said *John Edensee*, his executors, administrators, and assigns, in manner and form following, (*viz.*) that he the said Earl, his heirs or assigns, shall and will allow unto the said *John Edensee*, his executors, administrators, or assigns, out of the yearly rent hereby reserved, the price at the kiln of four waggon loads of lime; AND ALSO shall and will, with all convenient speed, put the dwelling-house and out-buildings of and on the said demised premises in good and substantial order, condition, and repair; AND likewise shall and will from time to time appoint unto the said *John Edensee*, his executors, administrators, and assigns, necessary and convenient timber on the stem on the said demised premises, or within two miles thereof, for and towards the repairing of the same; and also reasonable wood from the pollard trees, or elsewhere on the said demised premises, for summer fuel for the dairy, and for ploughbôte, cartbôte, and hedgebôte, as aforesaid; AND that he the said *John Edensee*, his executors, administrators, and assigns, (paying, rendering, and performing the several rents, duties, and services hereby reserved, and observing and performing the covenants and agreements herein contained,) shall and may peaceably

peaceably have, hold, occupy, and enjoy the said demised premises, and every part thereof, without the lawful let, suit, eviction, molestation, or denial of the said Earl, his heirs or assigns, or of any person or persons lawfully or equitably claiming or to claim from, by, under, or in trust for him, them, or any of them: PROVIDED ALWAYS, and it is hereby agreed by and between the parties hereto, and these presents are upon this express condition, that if all, any, or either of the said yearly or other rents, duties, or services hereby reserved shall be behind, or unpaid, or unperformed, wholly or in part, by the space of twenty days next after either of the said days or times whereon the same ought respectively to be paid or performed, and the same shall be demanded on the expiration of the said twenty days, or at any time afterwards, and not then paid; or if the said *John Edenssee*, his executors, administrators, or assigns, shall not keep all and singular the said demised premises in all things in such good and sufficient order, condition, and repair as aforesaid; or shall not pay on demand such sum and sums of money as the said Earl of *Powis*, his heirs or assigns, shall lay out and expend in repairing or amending the same as aforesaid; or shall not plant quick from time to time in the dead or decayed parts of the hedge, and preserve and keep from destruction, spoil, and damage, the same, and the wood, underwood, timber, and other trees and saplings which now are or hereafter shall be planted or growing on the said demised premises as aforesaid; or if he or they shall not inhabit, or cause to be inhabited as aforesaid the said dwelling-house, and occupy, manage, manure, and improve the lands and premises hereby demised, in the manner hereinbefore agreed, expressed, and laid down; or shall carry off the said demised premises any unthrashed corn or grain in any hay, straw, fodder, fuel, muck, dung, compost, or other manure which shall be produced or raised thereon; or let or molest the said Earl, his heirs or assigns, or his or their agent, servants, workmen, chapmen, and dealers, or any of them, in the exercise or enjoyment of all or any of the liberties, privileges, matters, or things hereinbefore excepted; or shall assign, set, or let the said demised premises, or any part thereof, without such licence as aforesaid, or otherwise than shall in such licence be expressed; or shall permit or suffer any person or persons to make any road or path

PRECEDENTS

(other than those which are or shall be lawfully established), or to hunt, course, hawk, set, fowl, or fish in, upon, or over the said demised premises, or any part thereof; or shall refuse or neglect to give such notice or notices, or to commence, prosecute, and continue such action or actions at law as aforesaid, at the request, costs, and charges of the said Earl, his heirs or assigns, or to pay and apply the damages which shall be recovered thereby for and towards such costs and charges as aforesaid; THAT THEN and thenceforth, for all or any of the said causes, it shall and may be lawful to and for the said Earl of *Powis*, his heirs or assigns, into all and singular the said demised premises, or into any part or parcel thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy in his and their first and former estate; any thing herein contained to the contrary notwithstanding. IN WITNESS, &c.

Lease of a House in *London* by a Devisee for Life.

Parties.

Lessor devisee of the premises.

Considerations, putting the house in repair, rent, &c.

Demise.

Parcels.

General words.

THIS INDENTURE, made, &c. 1771, BETWEEN *Mary Edensor* of, &c. and devisee for life named in the last will and testament of *William Edensor* her late husband, deceased, of the premises hereinafter mentioned to be hereby demised, of the one part, and *William Edensee* of, &c. of the other part, WITNESSETH, that for and in consideration of the covenant herein contained for putting the messuage or tenement and premises hereinafter mentioned to be hereby demised, in good and tenantable repair, and also in consideration of the yearly rent and other the covenants and agreements hereinafter reserved and contained on the part of the said *William Edensee*, his executors, administrators, and assigns, to be paid, done, and performed, she the said *Mary Edensor* HATH demised, leased, and set, and by these presents DOETH, &c. unto the said *William Edensee*, his executors, administrators, and assigns, ALL that messuage or tenement, &c. together with the ground or soil whereupon the said messuage or tenement, shops, buildings, and premises mentioned to be hereby demised do stand; AND ALSO all and singular cellars,

cellars, follars, shops, rooms, chambers, lights, easements, ways, paths, passages, waters, watercourses, profits, commodities, advantages, and appurtenances whatsoever to the said messuage or tenement, shops, buildings, and premises mentioned to be hereby demised, belonging, or in anywise appertaining, or therewith held and occupied or enjoyed as part, parcel, or member thereof, together with the use of all and singular the goods, utensils, fixtures, and other things mentioned in the schedule or inventory thereof hereunder written, TO HAVE AND TO HOLD the said messuage or tenement, yards, shops, buildings, and all and singular other the premises hereinbefore mentioned to be hereby demised, with their and every of their appurtenances, unto the said *William Edensee*, his executors, &c. from the feast day of *St. Michael* the Archangel now next ensuing the day of the date of these presents, for and during and unto the full end and term of twenty-one years thence next ensuing, and fully to be complete and ended, if she the said *Mary Edensor* shall so long live, YIELDING AND PAYING therefore on the feast of the Annunciation of the Blessed Virgin *Mary* now next ensuing, in full satisfaction of all rent which will become due on that day unto the said *Mary Edensor*, or her assigns, in case the said *Mary Edensor* shall so long live, the rent or sum of 8*l.* 12*s.* of lawful money of *Great Britain*, free from all deductions and abatements whatsoever (the land-tax only excepted); AND ALSO yielding and paying therefore yearly and every year during the residue and remainder of the said term of twenty-one years hereby demised unto the said *Mary Edensor*, and her assigns, if she the said *Mary Edensor* shall so long live, the yearly rent or sum of 80*l.* of like lawful money, by even and equal portions, on the four most usual feasts or days of payment in the year (that is to say) the feast of the Nativity of *St. John* the Baptist, &c. free and clear from all parliamentary, parochial, and other taxes, rates, charges, assessments, deductions, and abatements whatsoever, now charged or imposed, or hereafter to be charged or imposed on the said hereby demised premises, or on any part thereof, or on the said *Mary Edensor* or her assigns, for or on account thereof by authority of parliament, or otherwise howsoever (the land-tax only and always excepted); the first payment of the said yearly sum of 80*l.* to begin and be made on the feast

Schedule.

Habendum

for 21 years,
if lessor shall
so long live.
Reddendum.

Covenant by
lessee to pay
the rents,

to lay out
40*l.* in re-
pairs,

and to pro-
duce vouch-
ers that it
has been so
laid out :

To keep the
premises in
repair ;

of the Nativity of St. *John* the Baptist now next ensuing. AND the said *William Edensee* doth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, to and with the said *Mary Edensor*, and her assigns, in manner following ; (that is to say,) that he the said *William Edensee*, his executors, administrators, and assigns, shall and will yearly, and every year during the said term hereby demised, well and truly pay, or cause to be paid unto the said *Mary Edensor*, and her assigns, the said rents or sums of 8*l.* 12*s.* and 80*l.* upon the days and times, and in the manner hereinbefore limited and appointed for payment thereof, clear of all charges, taxes, and deductions whatsoever, (except as before excepted,) according to the true intent and meaning of these presents ; AND ALSO that he the said *William Edensee*, his executors, administrators, or assigns, some or one of them, shall and will before the 29th day of *September* now next ensuing, expend and lay out the sum of 40*l.* in good and necessary reparations and amendments in and upon the said messuage or tenement hereby demised, and shall and will put the said messuage or tenement, and other the premises hereby demised, in good and necessary tenantable repair and condition ; AND shall and will produce and shew to the said *Mary Edensor*, or her assigns, on or before the 29th day of *September* next, the bills and receipts of the workmen and others to be employed in and about the repairs of the said premises hereby demised, thereby to make it evidently to appear to the said *Mary Edensor*, or her assigns, that the said sum of 40*l.* hereinbefore covenanted to be laid out as aforesaid, shall have been so actually laid out in the necessary repairs and amendments of the same premises hereby demised, according to the true intent and meaning of these presents ; AND FURTHER, that he the said *William Edensee*, his executors, administrators, and assigns, shall and will from time to time, and at all times during the said term hereby demised, at his or their own costs and charges, as often as need or occasion shall be and require, continue to keep in good and sufficient repair, and uphold, support, maintain, sustain, pave, purge, scour, cleanse, paint, glaze, empty, amend, and keep the said messuage or tenement, yard, shops, buildings, and premises, with the appurtenances, hereinbefore mentioned to be hereby demised, and every part and parcel thereof, in, by, and with all and all manner

manner of needful and necessary reparations and amendments whatsoever; AND the said messuage or tenement, yards, shops, buildings, and premises so being in and by all things well and necessarily repaired, upholden, supported, maintained, sustained, paved, purged, scoured, cleansed, painted, fenced, glazed, emptied, amended, and kept, shall and will at the end, expiration, or other sooner determination of this demise, peaceably and quietly leave, surrender, and yield up unto the said *Mary Edensor*, and her assigns, in as good plight and condition as the same shall be in when repaired and amended, pursuant to the covenant hereinbefore contained for that purpose, together with the fixtures and things particularly mentioned and set forth in the schedule hereunder written (reasonable use and wear in the mean time, and damage of fire, only excepted): AND MOREOVER, that it shall and may be lawful to and for the said *Mary Edensor*, or her assigns, with workmen or others in her or their company, or without, twice or oftener in every year during the said term hereby demised, at meet and convenient times in the day-time to enter and come into and upon the said messuage or tenements, yards, messuages, buildings, and premises hereby demised, or into any part thereof, there to view, search, and see the state and condition thereof, and of the defects and want of reparation then and there found upon any such entry as aforesaid to give or leave notice or warning in writing at the said demised premises, to and for the said *William Edensee*, his executors, administrators, or assigns, to repair and amend the same within the space of three calendar months next after every such notice so given or left as aforesaid; within which time or space of three calendar months, the said *William Edensee* DOth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, to and with the said *Mary Edensor*, and her assigns, to repair and amend the same accordingly; AND FURTHER, that he the said *William Edensee*, his executors, administrators, or assigns, shall not nor will, during the said term hereby demised, make, erect, or set up any bow-window in the fore parlour of the said hereby demised messuage or tenement, or otherwise make any kind of alteration in the walls or principal timbers of the said messuage or tenement, without the special licence or consent of the said *Mary Edensor*, or her assigns, to be in that behalf first had and obtained in

and to surrender them at the end of the term in good and sufficient repair.

Power to lessor to enter and view the premises,

and to give notice to lessee to repair.

In consequence of which notice lessee to repair.

Lessee to make no bow-window, or alteration in the walls, &c. without licence.

Not to suffer
particular
trades to be
carried on.

writing under her or their hand or hands; AND shall not nor will without such licence or consent in writing as aforesaid, at any time or times during the said term hereby demised, permit or suffer the trades or employments of a butcher, brewer, tallow-chandler, maltster, dyer, fishmonger, piss-burner, or any of them, to be used or exercised in or upon the said demised premises, or any part thereof; or permit the same, or any part thereof, to be used for any auction or sale of goods, pictures, books, or other commodities, on any account whatsoever (the necessary merchandize and dealings of the said *William Edenssee* in his business of a , and a sale of the said *William Edenssee's* goods, furniture, and effects therein during the said term hereby demised, only excepted): PROVIDED ALWAYS, that if it shall happen that the said rents or sums of 8*l.* 12*s.* and 80*l.* hereinbefore reserved and made payable, or either of them, or any part thereof, shall be behind or unpaid in part or in the whole for the space of twenty-one days next over or after any of the said feasts or days of payment wherein the same ought to be paid, according to the reservation aforesaid, and the true intent and meaning of these presents, and the same shall be demanded on the expiration of the said twenty-one days, or at any time afterwards, and shall not be paid at the time of such demand, then and in such case it shall and may be lawful to and for the said *Mary Edensor*, and her assigns respectively, into and upon the said hereby demised premises, or into any part thereof in the name of the whole, wholly to re-enter, and the same to have again, repossess, and enjoy, as in her or their first or former estate, and the said *William Edenssee*, his executors, administrators, and assigns, and all other occupiers of the same premises, or any part thereof, thereout and thenceforth utterly to expel, put out, and amove; any thing herein contained to the contrary thereof in anywise notwithstanding. AND the said *Mary Edensor* doth hereby for herself, and her assigns, covenant, promise, and agree, to and with the said *William Edenssee*, his executors, administrators, and assigns, by these presents, in manner following; (that is to say,) that he the said *William Edenssee*, his executors, administrators, and assigns, paying the said rents or sums of 8*l.* 12*l.* and 80*l.* on the days and times, and in the proportions as the same are hereinbefore reserved and made payable, according

Provide if
rent behind
21 days,
lessor to enter
and put
out the
lessee.

Covenant by
lessor for
quiet enjoyment
by lessor
during
the term.

to the true intent and meaning of these presents, and observing, performing, fulfilling, and keeping all and singular the covenants, clauses, conditions, and agreements hereinbefore mentioned and contained on his and their parts and behalf from time to time during the aforesaid term hereby demised, to be paid, observed, performed, fulfilled, and kept, shall and lawfully may from time to time, and at all times during the said term hereby demised, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said messuage or tenement, yards, shops, buildings, and premises, with the appurtenances, for and during the term hereinbefore mentioned to be hereby demised, without any the lawful let, suit, hindrance, trouble, denial, eviction, interruption, or disturbance of or by her the said *Mary Edensor*, or her assigns, or of or by any other person or persons whomsoever lawfully claiming or to claim by, from, or under, or in trust for her, them, or any of them, or by or through her, their, or any of their acts, means, consents, default, privity, or procurement. IN WITNESS, &c.

Lease of a Mansion-House and Park by a Guardian and Ward.

THIS INDENTURE, made, &c. BETWEEN the Most Parties.
 Noble *Charlotte* Duchess Dowager of *Somerset*, guardian of the person and estates of the Most Noble *Charles* *Manners*, commonly called Marquis of *Granby*, a minor, of the first part; the said *Charles* Marquis of *Granby*, of the second part; and *John Edensee* of, &c. of the third part, WITNESSETH, that for and in consideration of the Consideration.
 rents, covenants, and agreements hereinafter reserved and contained on the part and behalf of the said *John Edensee*, his executors and administrators, to be kept and performed, she the said *Charlotte* Duchess of *Somerset*, and also the said *Charles* Marquis of *Granby*, HAVE, and each of them
 HATH demised, leased, and to farm let unto the said *John* Demise.
Edensee, his executors and administrators, ALL that capital Parcels,
 messuage or mansion-house late of the Most Noble *John* Marquis of *Granby*, deceased, and now of him the said
Charles

Charles Marquis of Granby, situate and being in the parish of *Chevely* in the county of *Cambridge*, with all the coach-houses, stables, hot-houses, out-houses, edifices, buildings, yards, gardens, orchards, ponds, fish-ponds, and appurtenances to the same belonging; AND all that park or inclosed grounds, and the several paddocks adjoining thereto, which park and paddocks are surrounded or inclosed with a brick wall, and consist together by estimation of 290 acres, or thereabouts, (be the same more or less,) and are situate, lying, and being in *Chevely* aforesaid, and belonging to and usually held and enjoyed with the said capital messuage or mansion-house, and are altogether called or known by the name of *Chevely Park*, and were heretofore in the occupation of the said late Marquis, and now are in the possession of the said *John Edensee*, and all ways, paths, passages, ridings, waters, watercourses, easements, privileges, profits, commons, pastures, feedings, commodities, emoluments, advantages, and appurtenances whatsoever to the said capital messuage or mansion-house, parks, paddocks, and premises respectively belonging, or in anywise appertaining; AND also the stock of deer in the said park, the numbers, ages, and values whereof are mentioned and particularised in the account or particular thereof marked and distinguished with or by the letter A, signed by the said *Duchess of Somerset* and *John Edensee*; and the fixtures, AND likewise the reasonable use and wear of fixtures, household goods, furniture, implements of household, and other things, which are mentioned and specified in the second schedule hereunto annexed, in an inventory or particular thereof marked or distinguished with or by the letter B, and also signed by the said *Duchess of Somerset* and *John Edensee*; SAVE AND EXCEPT, and always reserved out of this present demise and lease unto the said *Charles Marquis of Granby*, and his guardian for the time being, and other the person or persons who shall be entitled to the reversion or inheritance of the said premises immediately expectant on the determination of the present demise or lease, all and all manner of timber trees, and all other trees, woods, and underwood now standing, growing, or being, or which shall at any time during the continuance of this demise stand, grow, or be in or upon the said park, and paddocks, or any of them, or other the premises hereby demised, or any part thereof, with free liberty of ingress and regress to and for him, her, and them

Exception of timber trees;

and liberty to cut down the same;

them, with servants, agents, workmen, carts, cattle, carriages, and other necessities, into and upon and from the said premises, or any part thereof, at seasonable and convenient times in the year during the term hereby demised, to fell, cut down, grub, or stub up, saw, cut, cart, and carry away the same at his, her, and their free will and pleasure; AND ALSO save and except, and reserved hereout unto the said *Charles* Marquis of *Granby*, and his guardians for the time being, and other the person or persons who for the time being shall be entitled to the reversion or inheritance of the said premises immediately expectant on the determination of this present lease or demise, and his, her, or their friends and servants, in his, her, or their company, or by or with his, her, or their order and consent, free liberty to enter into and upon the said demised premises, and every or any part thereof, during the continuance of this demise, and to fish, fowl, and sport in and upon the said premises; AND ALSO for the said *Charles* Marquis of *Granby*, and his guardian for the time, and other the person or persons who for the time being shall be so entitled to the reversion or inheritance of the premises as aforesaid, and his, her, and their servants, workmen, or agents, to enter into and upon the said hereby demised premises, to view and see the state and condition of the repairs thereof, and of every part thereof, which ought to be done by him, her, or them, and to repair the same accordingly; TO HAVE AND TO HOLD all and every the said messuage or mansion-house, out-houses, buildings, gardens, park, paddocks, deer, and premises hereinbefore mentioned and intended to be hereby demised, with their and every of their appurtenances, and to have and take the use and enjoyment of all the said fixtures, household goods, furniture, implements of household, and other things which are mentioned and specified in the said second schedule hereunto annexed, in an inventory or particular marked with the letter B, unto the said *John Edessee*, his executors and administrators, from the 10th day of *October* last past, for and during and unto the full end and term of three years and one quarter of a year thence next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefore unto the said *Charles* Marquis of *Granby*, and his guardian for the time being, and other person and persons who for the time being shall be so entitled to the reversion or inheritance

to sport on
the premises;

and to view
the state and
repairs.

Habendum.

Raddendum.

of

P R E C E D E N T S

of the said demised premises as aforesaid, the yearly rent or sum of 250*l.* of, &c. by yearly payments, at or upon the four most usual days or times for payment of rent in the year, (that is to say) the 5th day of *January*, the 5th day of *April*, the 5th day of *July*, and the 10th day of *October*, by even and equal portions in every year during the said three years, part of the said term of three years and one quarter of a year, the first payment thereof to begin and be made on the 5th day of *January* now next ensuing, and the sum of 62*l.* 10*s.* of such lawful money as aforesaid for the quarter of a year, remainder of the same term, on the 5th day of *January* which will be in the year of our Lord ; ALSO YIELDING AND PAYING unto the said *Charles* Marquis of *Granby*, or his guardian for the time being, or other the person or persons who for the time being shall be so entitled to the reversion or inheritance of the said demised premises as aforesaid, by the like equal quarterly payments, at the said days and time on which the said rent of 250*l.* is hereinbefore made payable as aforesaid, the further quarterly rent or sum of 3*l.* of, &c. for each and every acre of the said park and paddock, or any of them, other than and except twelve acres of land, part of the said park, which is intended the first year of the said term of three years and one quarter of a year to be ploughed and sowed with corn, and laid down the same year with grass seeds as hereinafter mentioned, which he the said *John Edensee*, his executors or administrators, shall plough, dig, sow, or break up, or convert into tillage, at any time or times during the said term of three years and one quarter of a year, and so in proportion for any greater or less quantity than an acre of such ground. AND the said *John Edensee* doth for himself, his heirs, executors, and administrators, and for every of them, covenant, promise, and agree, to and with the said *Charlotte* Duchess of *Somerset*, and also to and with the said *Charles* Marquis of *Granby*, his heirs and assigns, by these presents, in manner following; (that is to say,) that he the said *John Edensee*, his executors or administrators, shall and will from time to time, and at all times during the continuance of this present demise, well and truly pay, or cause to be paid unto the said *Charles* Marquis of *Granby*, or his guardian, or other the person or persons who for the time being shall be entitled to the reversion or inheritance of the said demised

and of 5*l.* an
acre for
ground
ploughed up.

Covenants

for pay-
ment of the
rents, &c.;

demised premises immediately expectant upon the determination of the said term, the aforesaid rents hereby reserved or made payable on or at the days or times hereinbefore mentioned or appointed for payment thereof, and as and when the same shall respectively become due and payable as aforesaid, according to the true intent and meaning of these presents, without any deductions or abatements whatsoever (the land and militia tax only excepted); AND ALSO that he the said *John Edensee*, his executors and administrators, shall and will from time to time, and at all times during the continuance of this present demise, bear, pay, and discharge all and all manner of rates, taxes, assessments, and impositions whatsoever imposed or to be imposed on the premises hereby demised, or any part thereof, by authority of parliament, or otherwise howsoever (the land and militia tax only excepted); AND ALSO that the said *John Edensee*, his executors or administrators, or some or one of them, shall and will from time to time, and at all times hereafter during the continuance of this demise, when and as often as occasion shall require, at his or their proper costs and charges, well and sufficiently glaze and repair all the glass doors, windows, sashes, and casements in and belonging to the said hereby demised premises, or any part thereof; and well and sufficiently repair, uphold, support, maintain, sustain, cleanse, scour, empty, and keep the park, and all and every the mounds, fences, hedges, ditches, gates, bridges, stiles, rails, pales, posts, drains, which already are, or at any time hereafter during the continuance of this present demise shall be standing, being, or erected on the said premises, or any part thereof, in good and sufficient order and repair, and shall and will also fence and preserve all the wood and underwood on the said demised premises, so and in such manner as will prevent the deer, or any sheep or cattle from doing any damages thereto, the said *John Edensee*, his executors and administrators, being allowed upon the premises such rough timber as shall be necessary for such repairs and fences, to be assigned and set out by the said *Charles Marquis of Granby*, or his guardian, or other person or persons who for the time being shall be so entitled to the reversion or inheritance of the said demised premises, or his or their steward or agent; AND ALSO shall and will during the continuance of this demise keep all the said gardens and hot-houses properly stocked,

and payment of taxes;

except land and militia tax.

To keep the grounds and fences in repair;

and the garden, fish-ponds, and furniture;

PRECEDENTS

stocked, planted; weeded, gravelled, rolled, cleaned, and preserved; AND ALSO shall and will well and sufficiently improve, rail up, and preserve all and every the shrubs, fruit-trees, plants, vines, and other trees now or hereafter to be standing, growing, or being in the said gardens and hot-houses; and as often as the same or any of them shall happen to die or decay, shall and will plant others in their places, of as good or better sort in the room of those so dead or decayed as aforesaid; and also keep such of the ponds in the premises hereby demised as are now stocked with fish, properly stocked therewith. AND all the said hereby demised premises being so well and sufficiently repaired, upholden, sustained, cleansed, scoured, fenced, stocked, planted, weeded, gravelled, rolled, preserved, and kept in good order and repair as aforesaid, together with all the household goods, furniture, implements of household, and other things which are mentioned and specified in the second schedule hereunto annexed, being the said inventory or particular marked B, he the said *John Edensee*, his executors or administrators, shall and will at the end or other sooner determination of the said term of three years and one quarter of a year, which shall first happen, peaceably and quietly yield, surrender, and deliver up unto the said *Charles Marquis of Granby*, or his guardian, or other person or persons who at that time shall be entitled to the reversion or inheritance of the said demised premises (the reasonable use and wear of all the said premises, and casualties by fire in the mean time only excepted); AND ALSO that he the said *John Edensee*, his executors and administrators, shall and will from time to time, and at all times hereafter during the continuance of the said demise, take care of and support the stock of deer in the park hereby demised, and keep up and preserve the same, and kill and dispose of part thereof every year only according to the usual course of breeding, managing, preserving, and killing deer, so and in such manner as that the stock of deer in the said park may yearly and every year be kept up to the same number, and of the same ages and values as the present stock of deer, or as near thereto as conveniently can be; and such stock of deer so kept and preserved in manner aforesaid shall and will at the end or other sooner determination of the said term of three years and one quarter of a year, which shall first happen, leave in the said park, and deliver up unto the

and to keep
up the stock
of deer.

the said *Charles Marquis of Granby*, or his guardian, or other the person or persons who shall be then entitled to the freehold or inheritance of the same premises, to or for his or their use and benefit; and if such stock of deer shall at the end or other sooner determination of this demise, which shall first happen, not be equal in number and value to the present stock of deer mentioned or specified in the said account or particular marked A, as aforesaid, then and in such case he the said *John Edensee*, his executors or administrators, shall and will pay unto the said *Charles Marquis of Granby*, or his guardian, or other the person or persons who shall be then entitled to the said freehold or inheritance of the said hereby demised premises, to or for his or their use and benefit, such sum of money as shall make the value of the stock of deer at that time in the said park equal in value to the present stock of deer mentioned or specified in the said account, or first schedule or particular marked A, as aforesaid, unless such decrease of number or deficiency in value shall be occasioned by some pestilential or contagious disease or distemper which shall at any time during the continuance of this demise happen amongst the deer. AND it is hereby agreed and declared, by and between the parties hereto, that if the said *John Edensee*, his executors or administrators, shall during the continuance of this demise duly and properly conduct and manage the stock of deer in the said park, according to the usual course of breeding, managing, preserving, and killing deer, and there shall be at the end or sooner determination of this demise, which shall first happen to be, an increase in the number and value of the stock of deer in the said park which shall be so delivered by him or them as aforesaid, then that the said *Charles Marquis of Granby*, or his guardian, or other the person or persons who shall then be entitled to the freehold or inheritance of the said demised premises, shall and will pay or cause to be paid unto the said *John Edensee*, his executors or administrators, such sum of money as shall be equal to the additional or increased value of such stock of deer as shall be so delivered up as aforesaid, provided such stock of deer does not in the whole exceed the number of three hundred deer; AND that the said *John Edensee*, his executors or administrators, may in the first year of the aforesaid term of three years and one quarter of a year plough twelve acres of land, part of the aforesaid park, and sow the same with corn,

To plough
12 acres of
land in the
park.

torn, so that he or they do and shall in the same year lay the said twelve acres of land down with grass seeds as hereinafter mentioned; AND he the said *John Edensee* doth also for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said *Duchess of Somerset*, and also to and with the said *Charles Marquis of Granby*, his heirs and assigns, by these presents, in manner following; (that is to say,) that he the said *John Edensee*, his executors or administrators, shall and will during the continuance of this present demise well and sufficiently muck, dung, manure, and keep the said park, paddocks, and all the lands, grounds, and premises hereby demised, in good order, plight, and condition, and so leave the same at the end or other sooner determination of the said term, which shall first happen; AND ALSO that he the said *John Edensee*, his executors or administrators, or any other person or persons by his, their, or any of their means, consent, privity, or procurement, shall not and will not, at any time or times hereafter during the continuance of this present demise, do, make, or commit any manner of wilful waste or destruction in or upon the said hereby demised premises, or any part thereof, or in or upon the trees, hedges, quicksets, or underwoods thereof; and shall not and will not fell, cut down, stub up, or grub up, sell or carry away from off the hereby demised premises, or any part thereof, any wood, underwoods, trees, or hedges growing, or which shall grow upon the said demised premises, or any part thereof; and shall not and will not top or lop any of the trees growing, or which shall grow in and upon the hereby demised premises, or any part thereof, during the continuance of this present demise or lease, that have not usually been cropped, topped, or lopped, only for the necessary repairs of the hedges and fences on the premises hereby demised, at reasonable times, but shall and will carefully endeavour to preserve the same from any manner of hurt, spoil, or destruction; and shall not and will not cut, or cause to be cut, any of the hedges or underwoods growing, or which shall grow in or upon the said demised premises, or any part thereof, save for the necessary repairs of the said hedges and fences, and then only at fit and convenient times and seasons of the year; AND ALSO that he the said *John Edensee*, his executors and administrators, or any of them, shall not and will not, at any time during the continuance

To manure.

Not to commit wilful waste;

nor lop any trees;

nor lop any of the hedges;

not convert into tillage any of the ground.

continuance of the aforesaid term, plough, dig, sow, set, or convert into tillage any of the ground hereby demised, other than and except the twelve acres of land, part of the said park hereinbefore and hereinafter mentioned; and shall not and will not, during the said term, mow the said park or paddocks hereby demised, or any of them, or any part thereof, above once in any one year, nor convert the same or any part thereof for any purposes other than mowing or feeding; and shall not and will not do any other act whatsoever to impoverish the said park or paddocks, but on the contrary shall and will endeavour to improve the same; AND ALSO that he the said *John Edensee*, his executors or administrators, shall not and will not, during the continuance of this present demise, assign the said hereby demised lease or premises, or any part thereof, to any person or persons whomsoever without the licence or consent of the guardian for the time being of the said *Charles Marquis of Granby*, or the person or persons who for the time being shall be entitled to the freehold or inheritance of the said hereby demised premises, immediately expectant on the determination of the said term of three years and one quarter of a year, for that purpose first had and obtained in writing, signed with his, her, or their hand or hands; AND ALSO that he the said *John Edensee*, his executors and administrators, shall and will, in the first year of the said term of three years and one quarter of a year, sow and lay down the twelve acres of land, part of the said park which he or they is or are so empowered to plough in the same year as aforesaid, (six acres whereof have been heretofore ploughed,) with a sufficient quantity of good and proper grass-seeds, in a husband-like manner, and not afterwards plough or break up the same twelve acres of land, but continue the same as grass-land or ground, for and during the remainder of the same term of three years and one quarter of a year, and leave and give up the same as such in good condition at the end or other sooner determination of the said term, which shall first happen: PROVIDED ALWAYS, that if the said rents hereby reserved or made payable, or any of them, or any part thereof, shall be behind or unpaid by the space of forty days next over or after any of the days or times hereinbefore mentioned or appointed for the payment thereof as aforesaid, and the same shall be demanded on the expiration of the said forty days, or at any time afterwards, and shall not be paid at the time of such demand, or if the said *John Edensee*,

Not to assign
the premises.

To lay down
the ploughed
land.

Power of
re-entry.

Covenant
for quiet en-
joyment.

See, his executors or administrators, do not or shall not at all times hereafter well and truly observe, perform, fulfil, and keep all and singular the covenants or agreements herein contained, which on his or their parts and behalf are and ought to be observed, performed, fulfilled, and kept, then and in any such case it may and shall be lawful to and for the said *Charles Marquis of Granby*, or his guardians, for and on his behalf, or other the person or persons who for the time being shall be entitled to the freehold or inheritance of the said demised premises, into and upon the said hereby demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as in his or their first and former estates; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: AND the said *Duchess of Somerset* doth hereby for herself, her executors and administrators, and the said *Charles Marquis of Granby*, covenant, promise, and agree, to and with the said *John Edensee*, his executors and administrators, that he the said *John Edensee*, his executors and administrators, paying the said rents, and performing all the covenants and agreements hereinbefore reserved and contained on the part and behalf of the said *John Edensee*, his executors and administrators, to be paid, kept, observed, and performed, shall and may, during the continuance of this present demise, peaceably and quietly have, hold, occupy, possess, and enjoy all and singular the said demised premises, with their appurtenances, without the lawful let, suit, molestation, interruption, or disturbance of, from, or by the said *Duchess of Somerset*, or the said *Charles Marquis of Granby*. IN WITNESS, &c.

Lease of Mines.

Parties.

Considera-
tion.

Demise.

THIS INDENTURE, made, &c. BETWEEN the Right Honourable *George Edward Arthur Earl of Powis*, of the one part, *Thomas Edensee* of, &c. and *John Macgee* of, &c. miners, of the other part, WITNESSETH, that the said *Earl of Powis*, in consideration of the rent, duties, covenants, and agreements hereinafter reserved and contained, on the part of the said *Thomas Edensee* and *John Macgee*, to be paid, observed, and performed, HATH demised, set, and to farm let, and by these presents DOth demise,

demise, set, and to farm let and set unto the said *Thomas Edensee* and *John Macgee*, ALL and every the mines, veins, Parcels. strings, groves, rakes, pipes, and beds of lead ore, tin ore, copper ore, calamine, booze, smytham, and other minerals and matters to make lead, tin, copper, brass, or other metal which now are or is, or which shall or may be opened or discovered in or upon all that part of the waste land called *Coedy Graig*, otherwise *Crickbeath Hill*, situate, lying, and being in the townships of *Llyncklys* and *Crickbeath*, or one of them, within the manor of *Duparts* in the county of *Salop*, bounded on the south from the Boundaries. lands of *Sir Henry Bridgman*, Bart. to a close called *Cae Bagley*, by a certain old mine-work called the *Great Rake*, and from thence to the road from *Llanymyneck* to *Oswestry*, by part of *Cae Bagley* aforesaid, and a certain mark or boundary lately made and set out between the works hereby intended to be demised and granted, and certain other works on the other part of *Crickbeath Hill* aforesaid, now or lately carried on by *Ellis Jones* and *John Butler*; on the east by the said road from *Llanymyneck* to *Oswestry*, and by lands of and belonging to — *Green*, Esquire, the said Earl of *Powis* and *John Robert Hill*, Esquire; on the north by a close of the said *John Robert Hill* and the road from *Shrewsbury* to *Llanraide*; and on the west by the aforesaid *Sir Henry Bridgman*, Bart.; AND ALSO in, upon, or underneath ALL that part of *Cae Bagley* aforesaid, lying on the north side of the aforementioned mark or boundary between this and Messrs. *Jenkins* and *Hill's* works, together with all the inclosures belonging to the said Earl upon the first aforementioned part of the said waste land; ALL which part of the said waste land, the said close called *Cae Bagley*, and the said several inclosures with the boundaries aforesaid, are more particularly delineated, described, and set forth in the map, plot, or ground plan contained in the margin of these presents. AND the said Earl hath given and granted, and doth hereby give and grant unto the said *Thomas Edensee* and *John Macgee*, full liberty and authority to and for them, their executors, administrators, and assigns, with miners, agents, workmen, and servants, to open, sink, drive, dig, work, and make any shafts, drifts, cross cuts, fumphs, pits, and adits, and to win, gain, get up, work, stamp, buddle, wash, cleanse, make merchantable, smelt, run down, refine, and keep the said minerals, ores, and other matters and premises hereby granted in, upon, and from the said lands contained within

the boundaries aforesaid; or any part thereof; AND ALSO to erect, build, set up, repair, maintain, and continue any smelting-houses, store-houses, bingsters, smithies, forges, workshops, mills, pumps, gins, and other buildings, engines, and machines, for all or any of the said purposes, and any dwelling-houses or cabins for the habitation of their agents, servants, and workmen, during such time as they shall respectively be employed in and about working the said mines, or cleaning and smelting the said ore or minerals; AND LIKEWISE full liberty and authority to raise, take, convert, and use stones, clay, and waters, and cut and make watercourses, trenches, and buddles, and generally to do all or any other necessary, convenient, and reasonable acts, matters, and things in and upon the said lands contained within the boundaries aforesaid, or any part thereof, for the good and effectual erecting, building, setting up, repairing, and maintaining such houses, buildings, engines, and machines, and working the said mines, engines, and machines, and getting, manufacturing, taking, and carrying away the said metals, ores, minerals, and other demised matters, TO HAVE, HOLD, use, exercise, and enjoy the said mines, privileges, liberties, and authorities, and all and singular other the premises hereby respectively demised and granted unto the said *Thomas Edenssee* and *John Macgee*, their executors, administrators, and assigns, from the 29th day of *September* next ensuing, for and during the term of twenty-one years thence next following, and fully to be complete and ended; AND TO HAVE AND TO HOLD all and every the said ores, minerals, and other matters, to make lead, tin, copper, or brass, that shall be found, had, and gotten within the said term, in or upon all or any part of the said lands contained within the boundaries aforesaid, unto the said *Thomas Edenssee* and *John Macgee*, their executors, administrators, and assigns, to their own proper use, as their own proper goods and chattels for ever; YIELDING AND PAYING therefore unto the said Earl of *Powis*, his heirs and assigns, the several and respective royalties or sums of money following, of lawful money of *Great Britain*, (*viz.*) for every ton of lead ore the sum of 1*l.* and 5*s.*, for every ton of tin ore the sum of 3*l.*, for every ton of copper ore the sum of 2*l.* 10*s.*, for every ton of calamine the sum of 1*l.* 7*s.* 6*d.*, and for every ton of booze, smytham, and other matters to make lead, tin, copper, or brass, such sum or sums of money respectively as are usually and customarily paid for such

Habendum
the mines,
&c. for 21
years.

Habendum
the ore, &c.
gotten with-
in the term,
for ever.

Reddendum
for every ton
of the dif-
ferent kinds
of ore and
minerals dif-
ferent sums.

such matters in other mines, (which in case of dispute shall be ascertained and settled by two indifferent persons, whereof one shall be chosen by each party,) and in the said respective proportions for any greater or less quantity than a ton, the same ore, minerals, and other matters to be weighed from time to time after the same shall be cleansed and made merchantable, and fit for melting and calcining respectively, and within three calendar months next after the same shall be respectively had and gotten, and at or as near as conveniently may be to the place and places where the same shall be so respectively had and gotten, and the said several respective payments to be then and there made without any deduction or abatement, on any account whatsoever, and before any part of the said ores, minerals, or other matters be removed therefrom. AND the said *Thomas Edenssee* and *John Macgee* for themselves, and every of them, their and every of their heirs, executors, and administrators, do hereby jointly and severally covenant and agree, to and with the said Earl of *Powis*, his heirs and assigns, in manner following, (*viz.*) that they the said *Thomas Edenssee* and *John Macgee*, their executors, administrators, and assigns, shall and will from time to time, and at all times during the said term hereby granted, work and make trials for ores and minerals in, through, and upon the said lands within the boundaries aforesaid, according to the best and most improved methods of carrying on such works, and the usual course of working mines with effect, and keep six or more able labouring miners constantly employed in digging, searching for, and getting such ores and minerals; AND ALSO keep a true account in books of all the ores, minerals, and other matters, to make, lead, tin, copper, or brass, which they shall from time to time find and get in or upon the said lands contained within the boundaries aforesaid, or any part thereof, and permit the said Earl, his heirs and assigns, and his and their agents, at all seasonable times to inspect the same, and take copies thereof and extracts therefrom; AND shall and will make merchantable and fit for smelting and calcining respectively, and weigh up once in every three calendar months at farthest, all such and so much of the said ores, minerals, and other matters as shall have been gotten as aforesaid three months next before, and be remaining unaccounted for to the said Earl, his heir or assigns; AND shall and will give notice in writing of their intending so to weigh,

Covenant by
lesses to
make trials
for the ore
according to
the best
method;

and to keep
a true ac-
count of the
ores they
may find,
and to permit
lessor to in-
spect the
books and
make ex-
tracts there-
from,
and weigh
up the ore
once in three
months,

and give the
lessor notice
thereof,

and pay the
rent reserv-
ed.

In default
of weighing,
notice, or
payment,
lessee to dis-
train.

To pay the
occupiers of
the closes
within the
boundaries
of the de-
mise a rea-
sonable satis-
faction for
the damage
occasioned
by working
the mines,
&c.;

to clear out
the shafts,
drifts, &c.;

at least six days before each time of weighing, unto the said Earl, his heirs or assigns, or his or their agent; and shall not nor will weigh any of the said ores, minerals, or other matters, without the attendance or privity of the said Earl, his heirs or assigns, or his or their agent; AND ALSO that they the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, shall and will from time to time pay or cause to be paid unto the said Earl, his heirs and assigns, the before reserved royalties or sums of money in manner aforesaid, immediately after and at the time and place where the said ores, minerals, or other matters shall be from time to time respectively weighed, and before any part thereof shall be carried away as aforesaid; AND in default at any time or times of such weighing, notice, and payment, or either of them, that then and so often it shall and may be lawful to and for the said Earl, his heirs or assigns, or his or their agent, from time to time to seize and distrain all the ores, minerals, and other matters which are and thereafter shall be raised and remaining on the said lands, within the boundaries aforesaid, or any part thereof, and the same to impound, sell, and dispose of, for and towards the satisfaction and payment of such royalties or sums of money, and all arrears thereof, and also all the costs and charges incident to or occasioned by such distress or distresses, in the like and as full and ample manner and form as any rent whatsoever can or may be recovered by law; AND LIKEWISE that they the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, shall and will from time to time, upon demand, pay the several occupiers for the time being of the said close called *Cae Bagley*, and other the inclosures on or near the said lands contained within the boundaries aforesaid, reasonable satisfaction for the trespass or damage that shall be committed or occasioned on their said respective lands by working the said mines, or carrying or not carrying away the produce thereof, or any materials to and from the said premises; satisfaction in case of disputes to be ascertained and settled by two indifferent persons, whereof one shall be chosen by each party; AND shall and will from time to time, and at all times during the term hereby granted, well and effectually clear out of all and every the shafts, drifts, cross cuts, sumphs, pits, and adits which they have sunk, dug, or worked, or shall sink, dig, or work, in or upon the said lands contained within the boundaries

boundaries aforesaid, or any part thereof, all the deeds, gear, or waste which shall arise or be there, and leave sufficient and substantial branching or other supports therein for the effectual support of the mine; AND ALSO well and effectually secure all and every the said shafts, drifts, cross cuts, sumphs, pits, and adits, as well within as on the surface; AND not make up or fill, or suffer to be made up or filled, the same, any or either of them, as usefess, not worth working in, or otherwise, without the consent of the said Earl, his heirs or assigns, or his or their agents, first obtained in writing; nor do or commit, or suffer to be done or committed, any wilful, careless, or negligent act, matter, or thing whatsoever which may damage, hazard, or endanger the said mines, or any of them, or the future working thereof; AND MOREOVER, that they the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, shall and will at all seasonable times, and in the usual manner, convey the said Earl, his heirs and assigns, and his and their agents, *gratis*, into, through, and out of the said mines and works, and every accessible part thereof, and permit and suffer him and them to survey and inspect the same, and all houses, buildings, erections, engines, and machines therein, and to see the manner in which the same are worked, managed, and carried on, and the state and condition thereof; AND ALSO shall and will, at the end or sooner determination of the said term hereby granted, leave and yield up all and every the said mines and works, and all useful shafts, drifts, cross cuts, sumphs, pits, adits, buddles, watercourses, dwelling-houses, cabins, smelting-houses, store-houses, bingsteads, smithies, forges, workshops, mills, pumps, gins, and other buildings, erections, engines, and works which they shall sink, drive, dig, work in, erect, build, set up, or make in or upon the said lands, or any part thereof, in good and substantial order, condition, and repair, unto the said Earl, his heirs and assigns, he or they paying a reasonable price for the said premises and gins, for the machinery and other parts (except the walls, windows, partitions, doors, and covers) of the said smelting-houses, smithies, forges, mills, and other engines and machines, and for the timber and iron of and belonging to the said bingsteads and buddles, which price in case of dispute shall be set by two indifferent persons (whereof one shall be chosen by each party); but in case the said Earl, his heirs or assigns, shall not be minded to keep

not to do
any act to
the injury of
the mines;

to convey
lessor and his
agents *gratis*
through the
mines, for
the purpose
of inspect-
ing them;

and surren-
der the
works at the
end of the
term in good
order.

the lessor
paying a
reasonable
price for the
machinery,
&c.

Lessor not to
be obliged to
take all.

Covenant by
lessor for
quiet enjoy-
ment.

Proviso for
re-entry.

all the said premises to be so paid for as aforesaid, then the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, shall and may take and carry away for their own use and benefit, such of them as the said Earl, his heirs or assigns, or his or their agent, shall appoint, and the remainder only to be valued as aforesaid, and paid for by the said Earl, his heirs or assigns; AND the said Earl of *Powis* for himself, his heirs, executors, and administrators, doth hereby covenant with and grant unto the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, that they the said *Thomas Edensee* and *John Macgee*, their executors, administrators, and assigns, (by and under the rents or royalties, and covenants and agreements herein contained,) shall and lawfully may quietly have, hold, use, exercise, and enjoy the said mines, privileges, liberties, authorities, and all and singular the premises hereby respectively demised and granted, without any lawful suit, eviction, let, or molestation of or by the said Earl, his heirs or assigns, or any person or persons claiming or to claim from, by, under, or in trust for him or them: PROVIDED ALWAYS, and it is hereby covenanted, agreed, and declared by and between the said parties hereto, that if the said *Thomas Edensee* and *John Macgee*, their executors, administrators, or assigns, shall omit, for the space of two months together in any one year of the said term, to keep one pit or shaft at least constantly, regularly, and effectually at work upon the said lands contained within the boundaries aforesaid, or some part thereof, or at any time to keep six able labouring miners at least employed in the digging, searching for, and getting the said ores and minerals, or to keep such books of account as aforesaid, or shall not permit such books of account to be inspected, copied, or extracted as aforesaid; or if they do or shall refuse or neglect to weigh up, or cause to be weighed up, once in every three calendar months, all the ores and minerals that shall be gotten as aforesaid, or to give such previous notice of each weighing as hereinbefore mentioned, or pay unto the said Earl, his heirs and assigns, all and every the sum and sums of money hereby reserved and made payable to him and them as aforesaid, or to make to any of the said tenants or occupiers of *Cae Bagley*, or other the said inclosed lands within, on, or near the boundaries aforesaid, such satisfaction for trespass and damage as aforesaid, or to name a proper indifferent person for ascertaining

ascertaining the amount thereof in case of dispute therein as aforesaid, or to clear the said mines and works of the deads, gear, or waste stuff, or any part thereof as aforesaid, or to leave proper and sufficient cranches therein as aforesaid, or well and sufficiently to secure the said mines and works, or any part thereof as aforesaid, or if they shall make up or fill any or either of the said shafts, drifts, cross cuts, sumphs, pits, or adits without such licence as aforesaid, or do or commit, or suffer to be done or committed, any wilful, careless, or negligent act, matter, or thing whatsoever which may damage, hazard, or endanger the said mines, or the present or future working thereof as aforesaid, or shall refuse or neglect to convey into, through, and out of the said mines and works, in manner aforesaid, such person or persons as shall be appointed to inspect the same as aforesaid, or any of them, or to permit and suffer such person or persons, or any of them, to inspect the said mines and works, or any part thereof, in manner and for the purpose aforesaid, that then and in any of the said cases it shall be lawful to and for the said Earl, his heirs or assigns, into the said mines and works, and all the said shafts, drifts, cross cuts, sumphs, pits, adits, trenches, buddles, and other the premises, or into any part thereof in the name of the whole, to re-enter, and the same and every part thereof to have again, repossess, and enjoy as in his and their first and former estate; any thing herein contained to the contrary notwithstanding:

PROVIDED ALSO, and the said parties hereto do hereby respectively further covenant, agree, and declare unto and with each other, that if it shall happen that the said demised premises shall not produce yearly, and every year during the last nineteen years of the said term of twenty-one years, lead ore, tin ore, copper ore, calamine, booze, or smytham, after the rate of two tons a-week, one week with another, to be weighed and computed after the same is cleansed, washed, dressed, and made merchantable and fit for smelting; AND they the said *Thomas Edenssee* and *John Macgee*, their executors, administrators, and assigns, shall not, in and during the year in which such deficiency shall happen, have laid out and expended the sum of 100%. In the work of labouring miners only in the making and pursuing trials, exclusive of the charges of agents, engineers, mechanicks, engines, machines, tools, and other materials;

Provide, that if the premises do not in the last 19 years of the term produce on an average two tons a-week,

and the lesses shall not, in the year wherein the deficiency shall happen, have expended 100% in the work of labouring miners only, &c.,

the lessees
will pay the
rent of 200*l.*
in lieu of the
stipulated
payments,

or will give
notice to
quit and sur-
render up
the lease
twelve
months af-
terwards.

materials; THAT THEN and in such case the said *Thomas Edenfee* and *John Macgee*, their executors, administrators, or assigns, shall and will on the first *Monday* in every three calendar months of the said last nineteen years of the said term, wherein it shall both happen that the same premises shall not produce, and the said *Thomas Edenfee* and *John Macgee*, their executors, administrators, or assigns, shall not expend in labour, as before respectively specified, well and truly pay or cause to be paid unto the said Earl, his heirs or assigns, the rent or sum of 200*l.* of lawful money of *Great Britain*, in lieu and stead of the payments; or shall and will give notice in writing unto the said Earl, his heirs or assigns, that they will surrender or yield up this present lease, and the premises hereby granted, at the end of twelve calendar months next after such notice, and shall and will accordingly surrender and deliver up the same to be cancelled and made void, and leave, and yield up all such houses, cabins, bingsteads, smithies, forges, mills, and other erections and buildings which shall have been erected and built by them, or either of them, by virtue of these presents, and remain standing one year next before the time of such notice given, together with all pits, shafts, levels, foughs, trenches, buddles, watercourses, and other works therein or belonging thereunto, in good and substantial condition and repair, according to the covenant hereinbefore contained; THEN and in such case these presents, and every clause, matter, and thing herein contained, and the term and estate hereby granted, shall at and from the end of such twelve calendar months cease, determine, and be utterly void, to all intents and purposes whatsoever; any thing herein contained to the contrary notwithstanding. IN WITNESS, &c.

Lord Grosvenor's Form of Leases of Lead Mines.

Parties.

Consider-
ation.

THIS INDENTURE, made, &c. BETWEEN the Right Honourable *Richard* Earl of *Grosvenor*, of the one part, and *William Edenfee* and *John Macgee*, of the other part, WITNESSETH, that for and in consideration of the reservations,

reservations; payments, covenants, and agreements hereinafter reserved and contained by and on the part and behalf of the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, to be paid, done, and performed, he the said Earl HATH demised, leased, granted, set, and to farm let, and by these presents BOTH demise, lease, grant, set, and to farm let unto the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, ALL, &c. together with full, free, and absolute liberty, licence, power, and authority to and for the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, agents, workmen, and servants, to open, dig, and sink or make a pit or pits, shafts, levels, drains, and foughs, and to search for, get, and take up; work, win, and dig all sorts of mines and minerals, vein and veins of lead or lead ore, and matters to make lead and calamine, or stone called *lapis calaminaris*, of, in, and from the aforementioned premises, or any part thereof; TOGETHER ALSO with full, free, and absolute liberty, licence, power, and authority to cut and make watercourses, drains, buddles, and bingsteads for washing, cleansing, and keeping the said ores, and water to wash the said lead ore, and for all other necessary uses about the said mines or works, and also places commonly called Buddles, in which the said ore may from time to time be conveniently washed and dressed, with free ingress, egress, and regress with carts, horses, and carriages, or otherwise, to carry the same ore or calamine, or stone called *lapis calaminaris*, and to bring and carry all other materials and necessary carriages to and from the said mines, rakes, beds, holes, and premises, and every or any of them; TO HAVE, HOLD, use, exercise, and enjoy the said ground, mines, minerals, veins, beds, rakes, holes, liberties, privileges, powers, and all and singular the premises hereby demised, or mentioned or intended so to be, with their and every of their appurtenances, unto the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of twenty-one years thence next ensuing, and fully to be complete and ended; AND TO HAVE AND TO HOLD all and every the lead ore and matters to make lead, and also the calamine or stone called *lapis calaminaris*, that shall be had, found, or gotten in every or any

Demise.

with liberty
to make
pits, shafts,
&c.;and cut wa-
tercourses,
&c.Habendum
the mines
for 21 years.Habendum
the ore to
the proper
use of the
lessees.

PRECEDENTS

Reddendum.

any part of the said ground during the term aforesaid, unto the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns, to their own use and behoof, and for and as their own goods and chattels for ever; YIELDING AND PAYING therefore, for the ores and calamine or stone called *lapis calaminaris*, to be gotten in the ground above described, the several prices following, (that is to say) the sum of a ton for every ton of lead ore, booze, and smytham, or matters to make lead, and for any other less quantity than a ton after the same rate, the same being well cleansed, washed, dressed, and made merchantable and fit for smelting, which the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns shall dig and get out of the said ground and premises, in the said place or map marked or distinguished with

Reddendum.

or out of any part thereof, and the sum of

l. a ton for every ton of calamine or stone called *lapis calaminaris* that shall be had, found, or gotten by them the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns, in or out of the said ground and premises hereby demised, or any part thereof, during the said term, the money to be paid at the time of weighing the said ore and calamine, or stone called *lapis calaminaris*, respectively, or once in three months at furthest during the said term, at the choice of the said Earl, his heirs or assigns, at or upon the place or places where the same shall be respectively gotten and weighed, before the same are carried away, without any deduction or abatement for or in respect of any matter, cause, or thing whatsoever. AND the said *William Edenssee* and *John Macgee* do hereby for themselves severally and respectively, and for their several and respective heirs, executors, administrators, and assigns, and for every of them, covenant, promise, and agree to and with the said Earl, his heirs and assigns, by these presents, that they the said *William Edenssee* and *John Macgee*, or one of them, their or one of their executors, administrators, or assigns, shall and will, during the said term of twenty-one years, well and truly content, satisfy, and pay, or cause to be well and truly satisfied, contented, and paid unto the said Earl, his heirs and assigns, for the said lead ore, booze, smytham, or matters to make lead and calamine, or stone called *lapis calaminaris*, the before mentioned or reserved several sums of

Covenant
for payment
of the rent;

of money for the said lead ore, after the same shall be cleansed, washed, dressed, and made merchantable and fit for smelting, and for the said calamine or stone called *lapis calaminaris*, immediately from and after or upon the weighing thereof respectively, at or upon the place or places where the same shall be respectively gotten and weighed, before the same be carried away; AND that they the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns, shall weigh up all the said lead ore, and matters to make lead and calamine, or stone called *lapis calaminaris*, that shall be gotten as aforesaid, being first well washed, dressed, and made merchantable and fit for smelting, or cause the same to be weighed up once in every three months at furthest after the digging and getting thereof respectively during the term hereby demised; AND ALSO that they the said *William Edenssee* and *John Macgee*, or one of them, their or one of their executors, administrators, or assigns, shall or will give or send two days' notice or more in writing before the weighing up of any of the said lead ore or calamine, or stone called *lapis calaminaris*, to the said Earl, his heirs or assigns, or to some of his or their agents or stewards, of the weighing thereof respectively, so that they or some of them may come or send to see the same weighed up, and that no lead ore, booze, or smytham, calamine or stone called *lapis calaminaris*, shall be weighed without such notice or privy of some or one of the agents or stewards of the said Earl, his heirs or assigns, as aforesaid; AND FURTHER, that they the said *William Edenssee* and *John Macgee*, their executors, administrators, or assigns, or one of them, shall and will, within the space of three years from the day of the date hereof, lay out and expend the sum of £. at the least in prosecuting the mines and works intended to be carried on pursuant to the powers hereinbefore contained; AND ALSO, that he the said Earl, his heirs or assigns, or the person or persons aforesaid, from time to time and at all times hereafter during the term hereby demised, at his and their will and pleasure, shall and may have the liberty, privilege, and advantage of the first refusal and preference in buying of and from the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns, all such quantities of lead ore which they or any of them shall, at any time hereafter during the said term hereby granted, get and raise from and out of the said premises, he the said

to weigh up
the ore once
in every
three
months;

and give two
days' notice
thereof to
lessor;

to lay out a
certain sum
in the first
three years
in prosecuting
the
mines, &c.

Lessor to
have the first
refusal of the
purchase of
the lead ore;

and to enter
in order to
inspect the
works.

said Earl, his heirs and assigns, paying unto the said *William Edensee* and *John Macgee*, their executors, administrators, or assigns, as good a price or as much money for such ore as they or any of them can get or procure elsewhere for the same, at the several and respective times that the said lead ore is or shall be offered or exposed to sale; AND FURTHER, that it shall and may be lawful to and for the said Earl, his heirs or assigns, and his or their agents, workmen, and servants, at all times during the said term, to enter into and upon the mines and works hereby demised, or any part thereof, and to go down any of the pit or pits, shaft or shafts, which now are or shall or may be hereafter sunk, opened, or made in, upon, or under the said premises, or any part thereof, and from time to time, when he or they shall think fit, to view, dial, and examine the same, and the state and condition and manner of working thereof, without receiving any interruption or hindrance whatsoever in doing thereof by or from the said *William Edensee* and *John Macgee*, or either of them, their or either of their executors, administrators, or assigns, or their or any of their agents, servants, or workmen; and for the purpose of going down the said pits or shafts, the said Earl, his heirs and assigns, and his and their agent, workmen, and servants, shall have the use of the ropes, turn-trees, and other materials of or belonging to the said mines or works necessary and convenient for going down the said pits or shafts; and in the measuring, dialing, and examining of the said mines or works, shall be effectually assisted by the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, and their agent, workmen, and servants; AND ALSO that they the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, shall and will, at the end of the term hereby demised, leave all and every the shafts which now are or at any time or times hereafter shall be sunk in or upon the said premises, or any part thereof, open and in good and sufficient repair: PROVIDED ALWAYS, that if the said *William Edensee* and *John Macgee*, their executors, administrators, or assigns, shall fail or omit, within the said space of three years from the day of the date hereof, to lay out and expend the said sum of £. at the least in prosecuting the said mines and works intended to be carried on in the said demised premises, or some part thereof; or shall during the said term neglect or omit to weigh up, or cause to

Lessee to
leave the
premises in
good repair
at the end of
the term.

Power of re-
entry in case
lessees shall
not lay out
the above-
mentioned
sum in pro-
secuting the
works;
or neglect to
weigh up
the ore,

to be weighed up, all such lead ore and matters to make lead of, and calamine or stone called *lapis calaminaris*, as shall be respectively gotten as aforesaid, and that well dressed, washed, and made merchantable and fit for smelting, within three months at the furthest after the digging or getting thereof; or to give such notice before the weighing up thereof as is hereinbefore mentioned; or if the said *William Edenssee* and *John Macgee*, their executors, administrators, or assigns, shall neglect or omit to truly satisfy content and pay, or cause to be well and truly satisfied, contented, and paid unto the said Earl, his heirs or assigns, any sum or sums of money hereby reserved and made payable according to the reservation aforesaid, and the true intent and meaning of their covenant in that behalf; or if the said *William Edenssee* and *John Macgee*, their executors, administrators, and assigns, or any of them, shall and do, at any time hereafter during the term hereby demised, set, let, demise, assign, or transfer over the mines and premises mentioned to be hereby granted, or any part thereof, to any person or persons whomsoever, except to some or one of their own family, without the licence and consent of the said Earl, his heirs and assigns, first had and obtained in writing for that purpose; (but nevertheless it is hereby agreed, and the said Earl doth hereby covenant, that the said *William Edenssee* and *John Macgee*, their executors, administrators, or assigns, shall and may, at any time or times during the term herein demised, be at liberty to take one or more partner or partners to be concerned with them in carrying on and working the said mines, and in the management and profits thereof, such partner or partners being first approved of by the said Earl, his heirs or assigns, or his or their principal agent for the time being;) or if the said *William Edenssee* and *John Macgee*, or either of them, their or any of their executors, administrators, or assigns, shall hinder or refuse the said Earl, his heirs or assigns, or his or their agents, workmen, and servants, or any of them, to go in to dial, view, and examine the said mines and works, or any of them; THAT THEN and in any of the said cases it shall and may be lawful to and for the said Earl, his heirs or assigns, into and upon the said premises, and into and upon the shafts and pits then and there undemolished and unpulled down, to enter, repossess, and enjoy the same, and the produce thereof, to his and their own use and benefit, as fully and effectually

and give notice thereof, or to pay the rent,

or shall assign the premises;

(but not to prevent them from taking a partner, approved by lessor;)

or hinder lessor from entering to inspect.

to

Covenant by
lessor for
quiet enjoy-
ment.

to all intents and purposes whatsoever as if these presents had not been made; any thing herein contained to the contrary thereof in anywise notwithstanding: AND the said Earl, for himself, his heirs, executors, administrators, and assigns, doth covenant, promise, and agree to and with the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, by these presents, that they the said *William Edensee* and *John Macgee*, their executors, administrators, and assigns, at and under the farms, covenants, payments, provisos, agreements, and reservations, shall and lawfully may peaceably and quietly have, hold, occupy, possess, and enjoy all and singular the hereinbefore demised premises, with the appurtenances, and have, hold, occupy, possess, and enjoy, take, and carry away, to their own proper use and uses, all the lead ore, booze, and smytham, or matters to make lead; AND ALSO all the calamine, or stone called *lapis calaminaris*, that shall be therein or in any part thereof gotten during the term hereby demised, without any matter of let, denial, interruption, or hindrance of, by, or from the said Earl, his heirs or assigns, or of any other person or persons whatsoever lawfully claiming or to claim by, from, or under him or them. IN WITNESS, &c.

Lease of a Farm for a Term of 14 Years, under divers Restrictions.

Parties.

Consider-
ation.

Demise.

THIS INDENTURE, made, &c. BETWEEN *John Henry Edensor* of, &c. in the county of *Devon*, Esq. of the one part, and *John Edensee* of, &c. in the said county, Yeoman, of the other part, WITNESSETH, that for and in consideration of the yearly rent hereinafter reserved payable during the term hereby demised, and of the covenants and agreements hereinafter entered into by the said *John Edensee*, and the conditions in these presents contained, the said *John Henry Edensor* HATH granted, demised, leased, and to farm let, and by these presents BOTH grant, demise, lease, and to farm let, unto the said *John Edensee*, his executors, administrators, and

and assigns, ALL that the capital messuage, tenement, barton, and farm, situate at within the parish of in the said county, now or late in the possession of *A. B.* and all houses, out-houses, edifices, buildings, gardens, orchards, lands, meadows, leases, pastures, feedings, the herbage and pasture of the woods and underwoods, and the ways, paths, passages, liberties, easements, profits, commodities, advantages, and emoluments whatsoever to the same messuage, tenement, barton, and farm belonging, or in anywise appertaining, and therewith now held and leased, occupied and enjoyed, as part, parcel, or member of the same several premises, or any or either of them; (EXCEPTING and always reserving unto the said *John Edensee*, his heirs and assigns, out of the tenement, barton, and farm hereinbefore mentioned, a field, piece, or plot of ground, parcel thereof, now planted with young trees, and called or known by the name of the *Nursery*; AND excepting and always reserving out of this present demise and grant unto the said *John Henry Edensor*, his heirs and assigns, all mines, minerals, fossils, and quarries, and all timber trees and young saplings likely to become timber, of what nature or sort soever, now being and growing, and hereafter to be and grow, or to plant, in or upon the hereby demised premises, or any part thereof, with free liberty of ingress, egress, and regress to and for the said *John Henry Edensor*, his heirs and assigns, and his and their servants, labourers, and workmen, to view and see the defects, repairs, and management of the hereby demised premises; and to dig, fell, cut down, root up, and work the mines, minerals, fossils, and quarries, trees and saplings hereby reserved, and to carry away the same trees and saplings, and the produce of the aforesaid mines and quarries, and all and singular other the articles and things hereby excepted and reserved, with all or any manner of carriages, and other conveyances (doing thereby no wilful wast); AND ALSO to hawk, hunt, fish, shoot, and fowl at will and pleasure on the several premises hereby demised, or intended so to be; AND ALSO the right and interest of planting trees of any sort on every or any part of the hereby demised premises within three feet of the troughs of the respective hedges and fences of the same, of rearing, fencing, and otherwise protecting the same when planted,) TO HAVE AND TO HOLD the messuage, tenement, barton, farm, and premises hereinbefore mentioned,

Exemption.

Habendum.

Reddendum.

*Reddendum
for every
acre of land
ploughed up.*

*Covenant to
pay the rent;*

tioned and particularly described, together with their several and respective rights, members, and appurtenances, unto the said *John Edensee*, his executors, administrators, and assigns, from the 24th day of *March* next ensuing the day of the date of these presents, for and during and unto the end of the term of fourteen years thenceforth next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year, from and after the commencement of the said term, and thenceforth during the same, unto the said *John Henry Edensor*, his heirs and assigns, by even and equal quarterly payments, at or upon the 25th day of *March*, the 24th day of *June*, the 29th day of *September*, and the 25th day of *December*, the rent or sum of 9*l.* of lawful money of *Great Britain*, clear of any demand, deduction, defalcation, and abatement out of the same, for or in respect of the tythes, poor-rates, window-tax, highway-rates, compositions, or any other imposition or outgoings whatsoever, (except the land-tax,) to be paid, assessed, imposed, made, or done on, for, or in respect of the hereby demised premises, the first payment of the aforesaid rent to be made on the 24th day of *June* now next ensuing the day of the date of these presents; YIELDING AND PAYING to the said *John Henry Edensor*, his heirs and assigns, over and besides the yearly rent hereinbefore first reserved, at and after the rate of 5*l.* a year of lawful money of *Great Britain*, an acre for every quantity of pasture and meadow ground of the hereby demised premises, which the said *John Edensee*, his executors, administrators, or assigns, shall at any time during the term hereby granted plough up for, or convert into tillage, the said last-mentioned rent to commence, payable as to each several parcel of the said pasture and meadow ground, from the ploughing up or converting the same into tillage, and to continue payable thenceforth during all the residue of the term assigned, which shall be then to come and unexpired on the quarterly days or times of payment, the first payment of the last-mentioned rent to be made on the day of payment of the yearly rent first above reserved, which, as to each and respective parcel of the aforesaid pasture and meadow ground, shall happen next after ploughing up the same: AND the said *John Edensee* for himself, his heirs, executors, administrators, and assigns, BOTH hereby covenant, promise, grant, and agree to and with

with the said *John Henry Edensor*, his heirs and assigns, in manner following; (that is to say,) that the said *John Edensee*, his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said *John Henry Edensor*, his heirs and assigns, the two several yearly rents hereinbefore reserved, on the days and times, and in the proportions hereinbefore limited for payment of the same, according to the respective reservations hereby thereof made, and the true intent and meaning of these presents; AND ALSO that he the said *John Edensee*, his executors, administrators, and assigns, shall and will at his and their own proper costs and charges respectively carry, or cause to be carried, into and upon every and each acre, and so in proportion for every less quantity than an acre, of the hereby demised premises that he or they during the subsistence of the term hereby granted shall till or break up to or for each course of tillage, for the first crop either twelve hogsheads of good well-burnt stone lime, 180 sacks of fine salt-water sand, or 160 seams of good hall dung, or one-third of each of the aforesaid three several sorts of manure, and there leave, mix, spread, cast abroad, and manage the same according to the best rules of good husbandry; AND that on and after manuring the hereby demised premises with such dressing, he the said *John Edensee*, his executors or administrators, shall not nor will, in any seven years of the term hereby demised, take from off the part or parts of the hereby demised premises wherein he or they shall have raised winter turnips, more than three crops of corn or grain; AND that he the said *John Edensee*, his executors or administrators, shall not nor will, in any seven years of the term hereby demised, take from off such part of the hereby demised premises whereon there shall have been raised no winter turnips, more than two crops of corn or grain, and that such two or three crops respectively of corn or grain shall in each course of tillage be taken severally and successively one after the other, and that of such three crops of corn or grain one and the first shall be wheat, and the other barley or oats; AND that in any one year of the term hereby demised, he the said *John Edensee*, his executors or administrators, shall not nor will sow or plant more than twelve acres of the hereby demised premises with winter turnips; AND that he the said *John Edensee*, his executors, administrators, and assigns, on request to him or them in that

to dress the
tillage land
with lime
and dung;

to take more than
three crops
of grain in
any seven
years from
the lands
whereon
there shall
be a crop of
winter
turnips,
and only two
where there
shall be no
winter
turnips;

to sow no
more than
twelve acres
with winter
turnips;

to give a
note in writ-
ing to lessor

of the name
of the per-
son, &c.
by and of
whom, &c.
the manure
is purchased,

and the
ground
where spent;
and on the
trial of any
issue for the
breach of
this cove-
nant, to give
no other evi-
dence than
what shall
be expressed
in the note.

behalf made by the said *John Henry Edensor*, his heirs or assigns, shall and will from time to time furnish the said *John Henry Edensor*, his heirs and assigns, with a note in writing to him or them subscribed, of the time and place, or times and places at which and whence the manure to be so as aforesaid expended shall have been purchased, the name or names, and place or all and every places of abode, of the person or persons by whom, and the parcel or several parcels of ground whereon the same manure shall have been brought and expended; AND on the trial of any issue or issues in regard to the breach of this foregoing covenant for manuring the hereby demised premises, shall not nor will produce, proffer, or give to any jury or juries, inquest or inquests, in any court or courts at law, evidence of any matter, act, or thing whatsoever, other than and except of such as shall be contained or expressed in such note in writing as aforesaid; AND that the said *John Edensee*, his executors, administrators, or assigns, on such trial as aforesaid, shall not nor will use the testimony of any person or persons but of him or them who shall be so as aforesaid named and designed, nor of him or them to any other purport, substance, or effect than shall be expressed in the note aforesaid, and name of the parcels, quantity of ground he or they shall have tilled from time to time.

(For other COVENANTS, see the preceding Leases.)

Lease of a Spot of Ground by Mortgagees in Fee, and Husband and Wife, in Right of the Wife as Heir of the Mortgagor, to be built on, for 99 Years, determinable on three Lives, and Declaration of the Uses of a Fine for corroborating the Term.

Partica.

THIS INDENTURE of three parts, made, &c. BETWEEN *J. S.* of, &c. gentleman, and *H. G.* late of, &c. (mortgagees in fee of the premises hereinafter demised, or intended so to be, under a mortgage thereof made to them by *A. F.* late of, &c. deceased, and *A. L.* of, &c. a trustee for the said *A. F.* by indentures of lease and release bearing date respectively on or about the 9th and 10th days

of *January* in the year 1775, the release being of three parts, and made, or mentioning to be made, between the said *A. F.* and the said *A. L.* of the first part, the said *J. S.* of the second part, and the said *H. G.* by his name, and their addition of *H. G.* of, &c. of the third part,) of the first part, the said *A. L.* and *M.* his wife, (which *M. L.* is the only daughter and heir at law of the said *A. F.*, and as such entitled to the premises hereinafter granted or demised, or intended so to be, subject to the mortgage made thereof to the said *J. S.* and *H. G.*) of the second part, and *B. L.* of, &c. of the third part, WITNESSETH, that in consideration of the yearly rent and heriots hereinafter reserved, and of the covenants and agreements hereinafter inserted, to be entered into by the said *B. L.*, and the conditions contained in these presents, the said *J. S.*, at the instance and request of the said *A. L.* and the said *M.* his wife, (testified by their being made a party or parties to these presents, and their severally executing the same,) and the said *H. G.* at the instance and request of the said *A. L.* and the said *M.* his wife, and by and with the privity and consent of the said *J. S.*, (testified as to the said *J. S.*, *A. L.*, and *M.* his wife respectively as aforesaid,) AND also the said *A. L.* and the said *M.* his wife HAVE, and every and each of them HATH granted, demised, leased, and to farm letten, and by these presents DO, and each and every of them BOTH grant, demise, lease, and to farm let unto the said *B. L.*, his executors, administrators, and assigns, A PIECE or spot of ground (part whereof is now or was lately a garden) situate in the parish of *A.*, abutting in front from north to south on the western side of the road leading northward from the town of *A.* aforesaid, and extending 63 feet from north to south, to be computed at the distance of 70 feet northward from the northern end of the malt-house, at the furthest end of the said street southward towards the said malt-house, and all the ground behind and to the westward of the same, 63 feet of ground in front so far as the brook there, and called the *O. Y.* (save and except a piece or spot of ground, feet wide from north to south, and 20 feet long from east to west, to be taken out of the south-west part of the said piece or parcel of ground hereinafter mentioned beyond the garden-wall now there, so as to be bounded by the said wall on the north part of the brook on the west part; a curtilage to a house behind the

Consideration.

PRECEDENTS

said malt-house on the south part, and part of the said piece or spot of ground hereby demised on the east part, which is reserved for enlarging the curtilage to the house and malt-house on the southern part of the piece or spot of ground, (which piece or spot of ground hereby demised is or was formerly parcel of a messuage or tenement, backside, orchard, and garden, which were conveyed by *W. H.* and *T. R.* to the said *A. F.* and *A. L.*, and the heirs and assigns of the said *A. L.*,) nevertheless as to the estate so limited to the said *A. L.* and his heirs, IN TRUST for the said *A. F.*, his heirs and assigns, for ever, by indentures of lease and release bearing date respectively on or about the 2d and 3d days of *June* in the year 1772, the indenture of release being of three parts, and made, or mentioning to be made, between the said *W. H.* of the first part, the said *T. R.* of the second part, and the said *A. F.* and *A. L.* of the third part; AND ALSO the right of building any one or more dwelling-house or dwelling-houses, out-house or out-houses, office or offices, on the said piece or spot of ground hereby demised, (except as aforesaid,) and of carrying the dwelling-house to be built on the southernmost part of the said piece or spot of ground hereby demised, and the said malt-house, and the wall raised or building on the north-east part thereof, home to the said malt-house and wall at any height above seven feet from the level of the road, there to the extent of the northern end of the said malt-house, and wall in front thereof; AND the right, liberty, and easement of fixing beams for securing the building to be so carried over the said seven feet of ground in the wall of the northern end of the said malt-house, and of the wall building in front of the same; AND ALSO the right, easement, and authority for him the said *B. L.*, his executors, administrators, and assigns, and his and their children, visitors, servants, labourers, and workmen, and all and every the tenants and occupiers of all and singular any or either of the dwelling-house or dwelling-houses, out-house or out-houses, to be so built as aforesaid on the said hereby demised premises, or any part thereof, for the time being, and their children, visitors, servants, labourers, and workmen, to pass and repass into, from, through, out of, and over the said seven feet of ground between the said malt-house and the said hereby demised premises, and that part of the curtilage within or beyond the same, and on the north-

north-west part thereof, which is in a direct line from east to west with the north-west corner of the said malt-house, to fetch water, or for any other purpose, when and so often as he and they respectively shall have occasion; AND ALSO the wall around the said piece of ground, now or formerly a garden plot, and all ways, paths, passages, waters, watercourses, easements, profits, commodities, advantages, and emoluments whatsoever to the said piece or spot of ground hereby demised, belonging or in anywise appertaining, or therewith or with any part thereof, now or at any time heretofore within twenty years last past, held, used, occupied, or enjoyed as part, parcel, or member thereof (**EXCEPTING** and always reserving unto the said *J. S.* and *H. G.*, their heirs and assigns, full and free liberty and authority for themselves and their servants, labourers, and workmen, and the said *A. L.* and the said *M.* his wife, to enter into and upon the said hereby demised premises, or any part thereof, or any of the dwelling-houses, out-houses, and offices to be built thereon, twice in every year of the term hereby granted, and then and there to go, pass, and repass into, from, and through the same, and every or any part thereof, to view and see the management, repairs, and condition of the same premises, and every part thereof); **TO HAVE AND TO HOLD** the said piece or spot of ground, rights, easements, liberties, privileges, interests, and authorities respectively hereby demised and granted, or intended so to be, and all and singular other the premises hereinbefore demised and granted, or intended so to be, (except as aforesaid,) with the appurtenances, unto the said *B. L.*, his executors, administrators, and assigns, henceforth for and during and unto the end of the full term or time of 99 years now next and immediately ensuing, and fully to be complete and ended, if *M. L.*, daughter of the said *B. L.*, aged about six years, *W. L.*, son of the said *B. L.*, aged about three years, and *H. S.*, son of *H. S.* of *A.* aforesaid, mason, any or either of them shall so long happen to live; **YIELDING AND PAYING** therefore unto the said *J. S.* and *H. G.*, their heirs or assigns, yearly and every year during the term hereby granted, the rent or sum of 2*s.* 6*d.* of lawful money of *Great Britain*, (clear of land-tax,) in even portions, by even and equal quarterly payments at or upon the days or times hereinafter mentioned; (that is to say,) the 25th day of *March*, the 24th day of *June*, the 29th

Exception.

Habendum.

Lives.

Reddendum
to the mort-
gagees.

*Reddendum
a heriot.*

*Covenant to
pay the rent;*

to build;

to repair;

29th day of *September*, and the 25th day of *December* (the first payment thereof to be made on the 25th day of *December* now next ensuing the day of the date of these presents); AND ALSO yielding and paying unto the said *J. S.* and *H. G.*, their heirs or assigns, the sum of 1*s.* in the name of an heriot or farlien, upon and after the decease of every of them the said *M. L.*, *W. L.*, and *H. L.*; AND the said *B. L.* doth by these presents for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, and agree to and with the said *J. S.* and *H. G.*, their heirs and assigns, in manner following; (that is to say,) that he the said *B. L.*, his executors, administrators, or assigns, shall or will from time to time, and at all times during the term hereby granted, well and truly pay or cause to be paid unto the said *J. S.* and *H. G.*, their heirs or assigns, the said rent or sum of 2*s.* 6*d.* a year, clear of land-tax, and the said sums for and in the name of heriots respectively hereby reserved, on the days or at the times hereinbefore limited or appointed for the payment of the same, and according to the reservation hereby made of the same respectively; AND ALSO that he the said *B. L.*, his executors, administrators, or assigns, shall or will, within the space of two years from the day of the date of these presents, at his or their own proper costs and charges, erect, build, finish, and complete in a good, substantial, and workman-like manner, on the said hereby demised premises, one or more dwelling-house or dwelling-houses three stories high, which, exclusive of that part thereof which shall be carried over the said seven feet of ground immediately adjoining to the said malt-house, shall extend sixty-three feet in front, and that first story shall be of wall of stone, and that the wood-work of the partitions and roof, and of the frame-work for the second and third stories, shall be of good heart of oak or red deal, and that the roof of the said dwelling-house or houses to the extent aforesaid, and also that part of the same which shall be carried over the said seven feet of ground immediately adjoining to the said malt-house, shall be covered with good plate-stone; AND that he the said *B. L.*, his executors, administrators, or assigns, shall or will from time to time, and at all times during the term hereby granted, when and after any dwelling-house or dwelling-houses, out-house or out-houses, office or offices, shall be erected or built on the said hereby demised premises, or
over

over the said seven feet of ground immediately adjoining to the said malt-house, repair, uphold, sustain, maintain, and keep the same in, by, and with all needful and necessary reparations and amendments whatsoever, when and as often as there shall be occasion for the same; AND that he the said *B. L.*, his executors, administrators, or assigns, ^{to leave in repair;} the same premises so well and sufficiently repaired, sustained, upheld, maintained, and kept, shall or will peaceably and quietly leave and yield up into the hands of the said *J. S.* and *H. G.*, their heirs or assigns, on the expiration or other sooner determination of the term hereby granted therein; AND that he the said *B. L.*, his executors, administrators, or assigns, shall or will bear, pay, ^{to pay the taxes;} and discharge all and singular the rates, taxes, duties, and impositions imposed or to be imposed, inclusive of the land-tax which at any time, and from time to time during the term hereby granted, shall become due for the said hereby demised premises, or the houses and buildings to be raised thereupon, when and as the same shall become due and payable, or as soon thereafter as he or they shall be thereunto requested by the said *J. S.* and *H. G.*, their heirs or assigns; AND that he the said *B. L.*, his executors, administrators, and assigns, and his and their servants, labourers, and workmen, in fixing the beams and rafters which are to be secured in the wall of the said malt-house, and of the wall in front thereof, shall do as little injury as ^{to do as little injury as possible to the walls in fixing the rafters.} may be to the same walls respectively, and repair and amend the part or parts thereof which shall be injured: PROVIDED ALWAYS nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of 2*s.* 6*d.*, or any quarterly payment or other portion thereof, or either of the said sums for heriots or farliens respectively shall be in arrear and unpaid in part, or in the whole, by the space of thirty days next over or after any day on which the same respectively shall become due, and the same shall be demanded on the expiration of the said thirty days, or at any time afterwards, and shall not be paid at the time at which such demand shall be made, and no sufficient distress or distresses can or may be had and peaceably taken on the said hereby demised premises, or any part thereof, whereby or wherewith the rent or heriot so being in arrear, together with all former arrears thereof, if any, and the costs, charges, and expences for and attending the raising and levying the same, may

Clause of
re-entry.

P R E C E D E N T S

may be raised and fully satisfied ; or if the said *B. L.*, his executors, administrators, or assigns, shall, at any time during the term hereby granted, do or commit, or suffer to be done or committed on the said hereby demised premises, or any part thereof, any manner of waste, spoil, or destruction whatsoever, other than and except by raising, erecting, and building thereon, or on some part thereof, one or more dwelling-house or dwelling-houses, out-house or out-houses, office or offices, in a good workman-like and substantial manner ; or if the said *B. L.*, his executors, administrators, or assigns, shall permit and suffer the dwelling-house or dwelling-houses, out-house or out-houses, office or offices, which shall be built by him the said *B. L.*, his executors, administrators, or assigns, on the said hereby demised premises, or any part thereof, or over the said seven feet of ground next immediately adjoining to the northern end or wall of the said malt-house, and of the wall in front thereof, to be ruinous or in decay altogether to the value of 40*s.* or above, and the same shall not be well and sufficiently amended and repaired, or compounded for within two calendar months next after notice or warning in that particular, under the hand or hands of the said *J. S.* and *H. G.*, their heirs or assigns, and to be given to the said *B. L.*, his executors, administrators, or assigns, or some or one of the tenants or occupiers for the time being, of some or one of the dwelling-house or dwelling-houses to be built on the said hereby demised premises ; or in case there shall be no such tenant or occupier, and in default of personal notice to the said *B. L.*, his executors, administrators, or assigns, and in these cases only, to be affixed on some conspicuous part of the said hereby demised premises, or the dwelling-house or dwelling-houses to be erected and built thereon ; THAT THEN or at any time thereafter, for all, any, or either of the causes aforesaid, it shall or may be lawful to and for the said *J. S.* and *H. G.*, their heirs or assigns, to enter into and upon all and singular the said hereby demised premises, and every part thereof, and the houses, edifices, and buildings to be raised and erected thereon, or on the said seven feet of ground next and immediately adjoining to the northern end or wall of the said malt-house, or into and upon any part of the same respectively in the name of the whole thereof altogether, and all and singular the said hereby demised premises, and the said

said houses, edifices, and buildings, and every part of the same, respectively to have, retain, hold, and enjoy, as if these presents had never been made or executed; these presents, or any thing in them contained to the contrary thereof in anywise notwithstanding. AND the said *A. L.* doth by these presents for himself, his heirs, executors, and administrators, covenant and agree with the said *B. L.* his executors, administrators, and assigns, in manner following; (that is to say,) that he the said *B. L.*, his executors, administrators, and assigns, by, under, and subject to the due payment of the yearly rent and sums of money for and in the name of heriots or farliens hereby reserved, the observance and performance of the covenant hereinbefore inserted to be entered into by the said *B. L.*, and the conditions hereinbefore contained, shall or may lawfully, peaceably, and quietly have, hold, use, occupy, possess, and enjoy all and singular the said hereby demised premises, and every part thereof, with the appurtenances, henceforth for and during the said term or time of ninety-nine years hereby granted therein, determinable as aforesaid, without any let, suit, trouble, molestation, eviction, ejection, expulsion, interruption, or denial of, from, or by them the said *A. L.*, *M.* his wife, *J. S.*, and *H. G.*, any or either of them, their, any, or either of their heirs or assigns, or of, from, or by any person or persons rightfully claiming or to claim by, from, or under them, any or either of them, or the said *A. F.* deceased; AND the said *A. L.* doth hereby grant unto the said *B. L.*, his executors, administrators, and assigns, the liberty to rip and take stones for the said intended buildings, from a rock near to the said hereby demised premises, belonging to the said *A. L.* in right of the said *M.* his wife, and adjoining to a gate called *Cleaves*, otherwise *Torbay's Gate*; AND LASTLY, it is agreed by and between all the said parties to these presents, that a fine which is about to be levied by the said *A. L.* and the said *M.* his wife, to the said *J. S.* of the said hereby demised premises, among others, in or as of *Trinity* term now last past, or *Michaelmas* term now next ensuing, or some subsequent term, shall, as to the same premises with the appurtenances, and the said rights, easements, liberties, privileges, interests, and authorities hereby granted to be enjoyed therewith, be and enure immediately after the same shall be levied; and that the said *J. S.*, and his heirs, shall accordingly stand seised of the said

Covenant by
mortgagor
for quiet en-
joyment.

Grant by
mortgagor
of liberty to
take stones.

Declaration
of the uses
of a fine.

said hereby demised premises, TO THE USE of the said *B. L.*, his executors, administrators, and assigns, for the term of ninety-nine years, to be computed from the delivery of these presents, and determine as aforesaid, for the corroborating and confirming the term estate and interest hereby granted to the said *B. L.*, his executors, administrators, and assigns, in the same premises. IN WITNESS, &c.

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T H E E N D.

E R R A T U M.

Page 97, line 11 from the bottom, *for personal read pastoral.*



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